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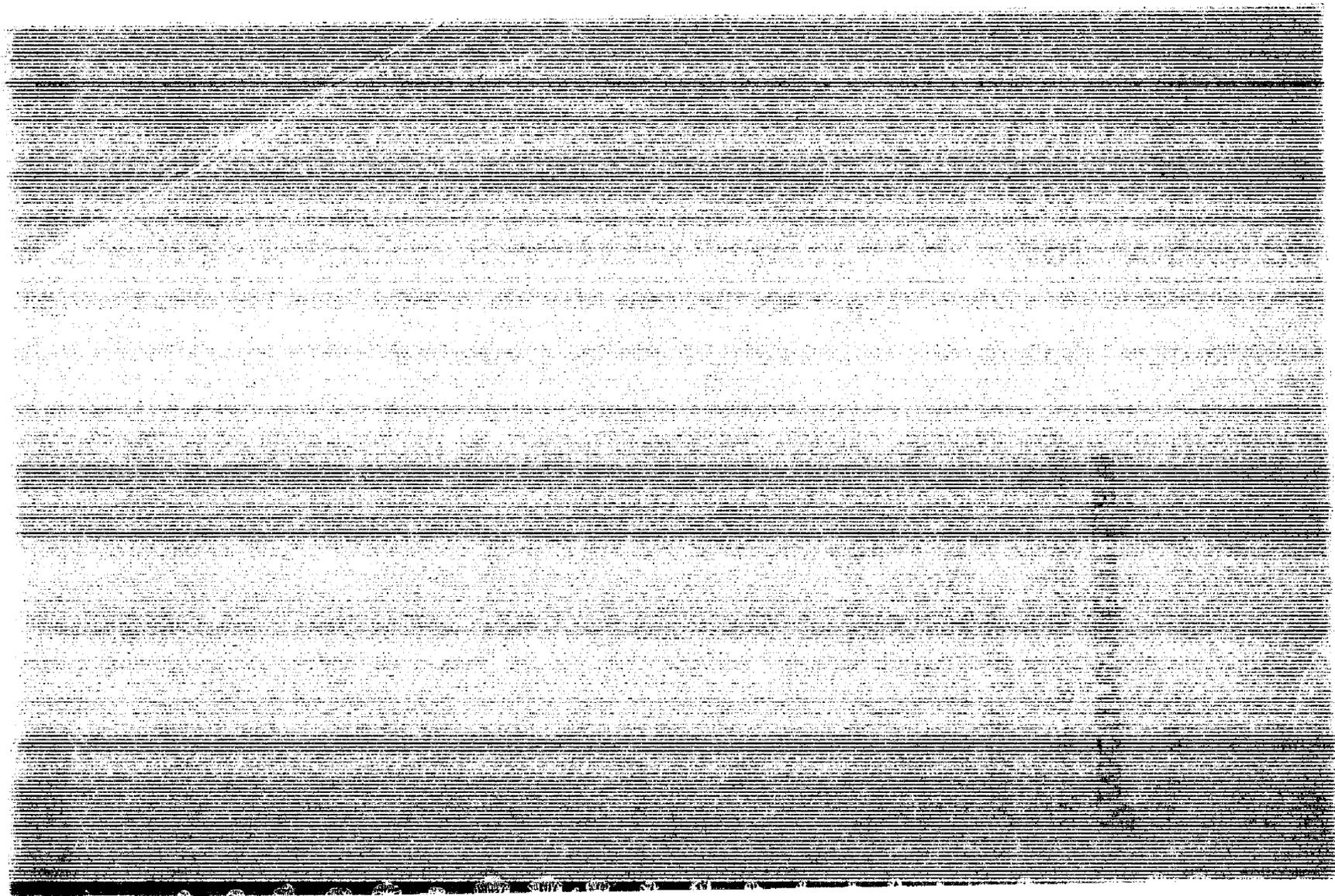
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January - March 1951



UNITED STATES GENERAL ACCOUNTING OFFICE

CHARLES A. BOWSER

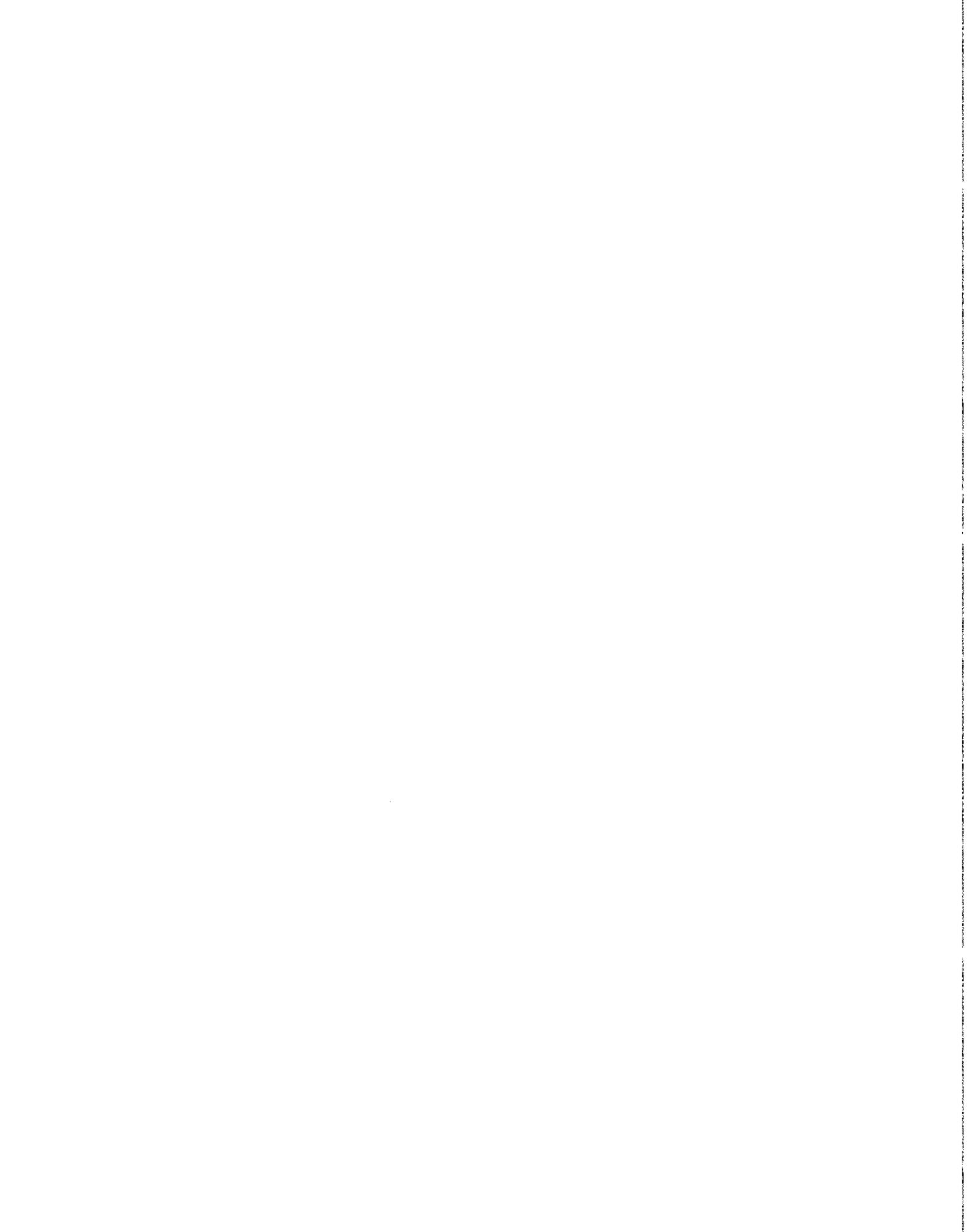
Comptroller General of the United States

VACANT

Deputy Comptroller General
of the United States

HARRY R. VAN CLEVE

Acting General Counsel



January through March 1984

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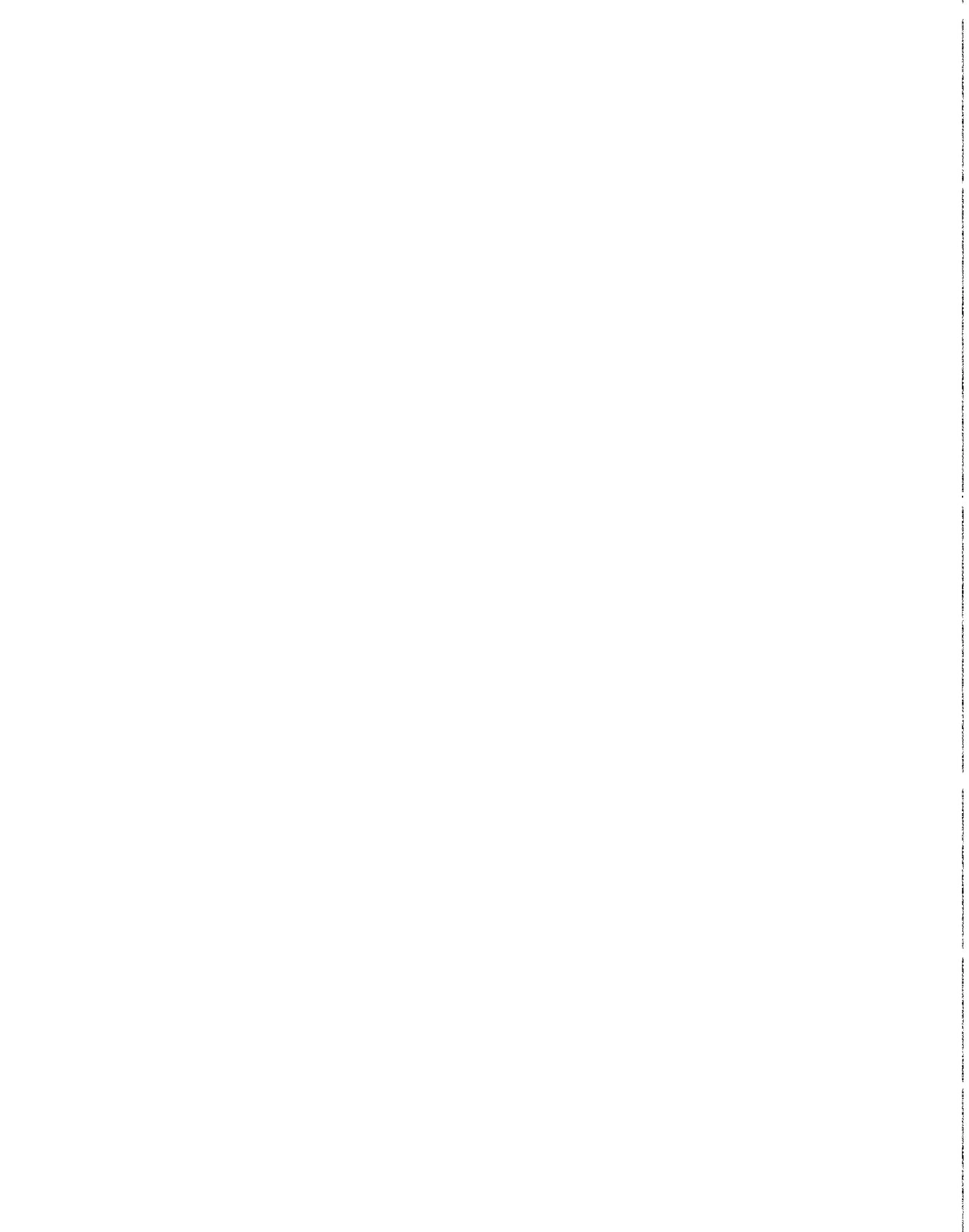


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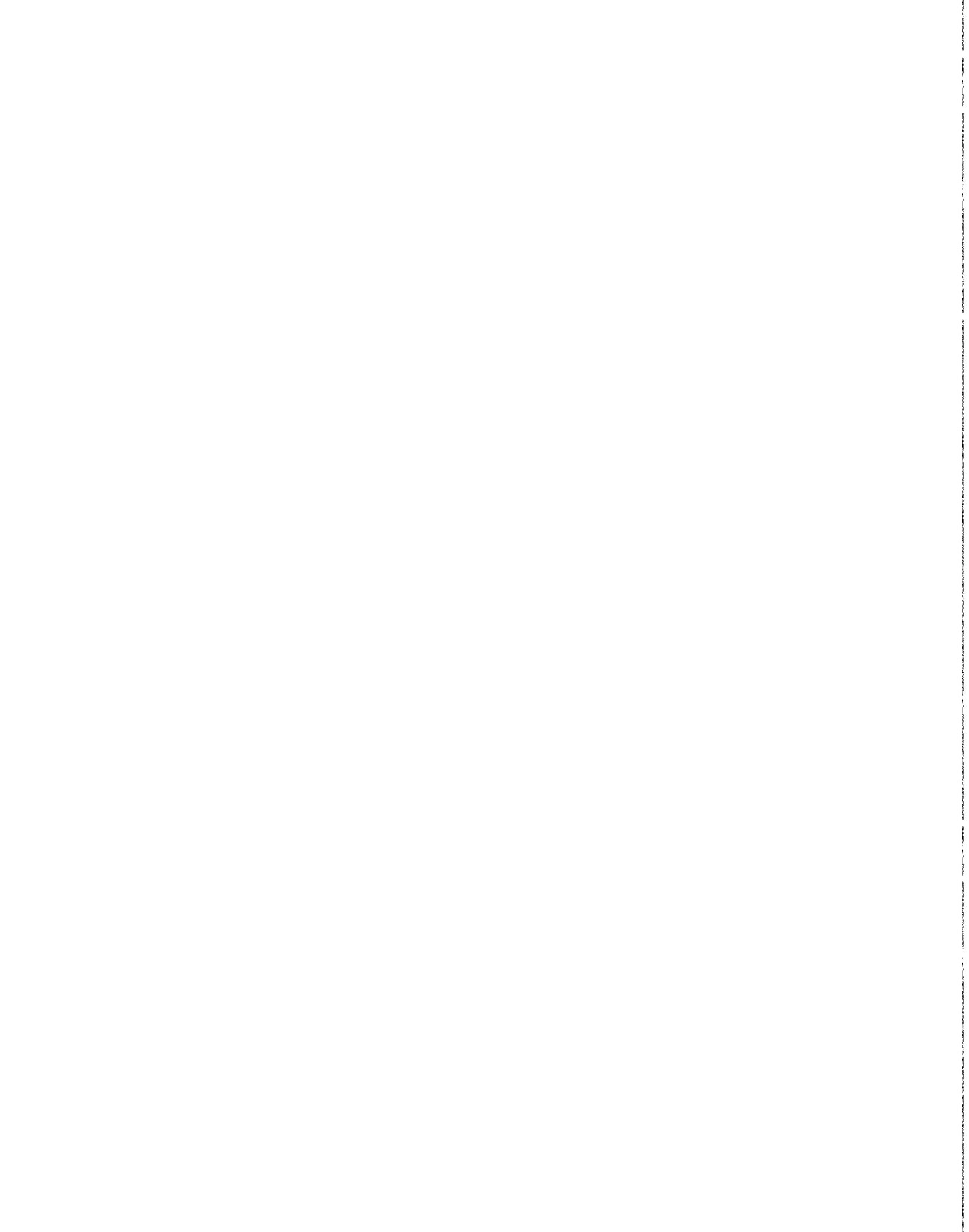
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B-213150 Jan 3, 1984 84-1 CPD 47

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--DEFECTIVE--
EVALUATION FACTORS

Protester contends that only one vendor can comply with solicitation requirements for current customer references and demonstration. Procuring agency contends that it did not intend requirements to be mandatory. However, requirements are mandatory. Protest is sustained because solicitation did not reflect agency's actual requirements.

B-213196 Jan. 3, 1983 84-1 CPD 48

CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE
RESPONSIBILITY CRITERIA--COMPLIANCE

Protest that awardee did not meet definitive responsibility criterion concerning experience is denied where record indicates awardee submitted adequate evidence from which contracting officer could reasonably conclude that criterion had been met.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING

GAO will not disturb procuring agency's determination that firm is nonresponsible when that determination is reasonably based on firm's inability to demonstrate compliance with experience requirements contained in IFB.

CONTRACTORS--RESPONSIBILITY--TIME FOR DETERMINING

Procuring agency is not required to delay award indefinitely while bidder attempts to cure causes for firm being found nonresponsible. Where low bidder fails to supply required information prior to day of contract award, after having ample opportunity to do so, agency reasonably may find low bidder nonresponsible.

*B-213196 Jan. 3, 1984 84-1 CPD 48 - Con.
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--
NONRESPONSIBLE OFFERORS*

Offeror found to be nonresponsible is not "interested" party under our Bid Protest Procedures to protest award to next low bidder where it does not appear that circumstances would lead to cancellation and resolicitation of procurement. However, GAO will review second low offeror's status due to court interest in our views.

*B-213364 Jan. 3, 1984 84-1 CPD 49
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of apparent alleged solicitation defect concerning required bidding scheme is untimely, since it was not filed prior to bid opening date as required by sec. 21.2(b)(1) of GAO Bid Protest Procedures, 4 C.F.R. 21.2(b)(1) (1983).

*B-213917 Jan. 3, 1984 84-1 CPD 50
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
ACCEPTANCE IN GOVERNMENT'S INTEREST--NOT PROVIDED FOR IN
SOLICITATION*

Proposal delivered by hand after time specified for receipt cannot be considered on ground that proposal offers significant cost and/or technical advantages to Govt. since solicitation contained no provision for such consideration.

*CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
WEATHER CONDITIONS, ROADBLOCKS, ETC.*

Proposal hand-delivered after time specified for receipt was properly rejected as late even though delay was caused by unusually severe weather since consideration of late proposals may be permitted only in exact circumstances provided for in solicitation.

B-212274 Jan. 4, 1984 84-1 CPD 51
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--NOT OVERSTATED

Protest concerning terms of contract for educational services is denied. Air Force's decision to have all courses which are part of baccalaureate degree program obtained from one institution is reasonable.

B-212299 Jan. 4, 1984
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--UNSOLICITED
PROPOSALS--DAMAGES, ETC. CLAIMS

Where claimant has not shown that agency, through actions of certain officers, induced claimant to develop prototype antipersonnel devices (which never were accepted), claim for development costs of \$2.25 million cannot be allowed.

B-213494 Jan. 4, 1984 84-1 CPD 52
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--BIDDER
REFUSING BID ACCEPTANCE TIME EXTENSION

Where all bidders were requested to extend bid acceptance period until Oct. 31 to allow time for preaward surveys and to ascertain availability of funding, low bidder only extended its bid until Oct. 17, and award was made to other than low bidder on Oct. 30, low bidder is not considered interested party for purpose of maintaining bid protest under GAO Bid Protest Procedures since it was no longer eligible for award after its bid acceptance period expired on Oct. 17.

B-213514 Jan. 5, 1984 84-1 CPD 54
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest to GAO filed more than 10 days after contracting officer informed protester that its bid was rejected as nonresponsive is untimely and not for consideration.

B-213643 Jan. 5, 1984 84-1 CPD 55

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR
APPLICATION*

Untimely protest of sole-source procurement does not present significant issue within meaning of sec. 21.2(c) of Bid Protest Procedures since GAO has issued numerous decisions setting forth basic principles governing such procurements.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest concerning proposed sole-source award filed after closing date for receipt of proposals is untimely since agency's publication of notice in Commerce Business Daily of decision to negotiate with one source and of closing date placed protester on notice of basis of protest prior to closing date.

B-209753.3 Jan. 6, 1984

*CONTRACTS--FEDERAL SUPPLY SCHEDULE--PURCHASES FOR SYSTEM--
MULTIPLE-AWARD SCHEDULE CONTRACTS--EVALUATION--PROPRIETY*

Where product offered by large business conforms to all expressed requirements of unrestricted line item in solicitation for multiple award contracts under FSS, it may not be rejected solely because of agency's previously unexpressed concern that acceptance might adversely impact another line item which has been set aside for small business firms.

B-212610 Jan. 9, 1984 84-1 CPD 56

BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

Agency need not resolicit even though potential bidder was unaware of solicitation because bidders mailing list on which its name appeared was lost and agency allegedly misclassified Commerce Business Daily notice of procurement where protester fails to show that agency deliberately attempted to

exclude it from competition and where, although only one bid was received, agency made significant effort to obtain competition and protester has failed to show that award was made at unreasonable price.

CONTRACTS--PROTESTS--ALLEGATION OF UNFAIRNESS--NOT SUPPORTED BY RECORD

Where protester alleges that during informal industry survey which preceded issuance of solicitation it was misinformed by procuring agency as to agency's needs but fails to show that it was thereby prejudiced in any way, then GAO need not consider merits of its protest as to this issue.

*B-213208 Jan. 9, 1984 84-1 CPD 58
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest is dismissed where underlying solicitation has been canceled, and this cancellation renders protest academic.

*B-213437 Jan. 9, 1984 84-1 CPD 59
CONTRACTS--PROTESTS--ALLEGATIONS--PREMATURE*

Allegation concerning propriety of use of Federal standard specification in future is dismissed as premature.

*B-213650 Jan. 9, 1984 84-1 CPD 60
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONFLICT OF
INTEREST STATUTES*

Protest that award to firm whose services will be performed by former Govt. employee resulted in that individual's violation of Ethics in Government Act (18 U.S.C. 207), and 18 U.S.C. 208, both criminal statutes, does not come within GAO's bid protest jurisdiction and enforcement of criminal laws are for Dept. of Justice. GAO's role is to determine whether former employee's participation resulted in bias on behalf of awardee, and protester has not offered evidence of that situation.

*B-213650 Jan. 9, 1984 84-1 CPD 60 - Con.
OFFICERS AND EMPLOYEES--CONTRACTING WITH GOVERNMENT--FORMER
EMPLOYEES*

It is not contrary to statute or regulation for former Govt. employee to accept employment with contractor to perform services under Govt. contract when such services are to begin after employee terminates his federal service.

*B-213922 Jan. 9, 1984
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against agency failure to include software conversion costs in RFP's cost evaluation is untimely when filed after closing date for receipt of proposals.

*B-213943 Jan. 9, 1984 84-1 CPD 61
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Allegation that firm does not comply with solicitation's general licensing requirement does not provide legal basis to object to award to that firm, since matter is one to be resolved between state and local authorities and contractor, and only in limited situations relates to finding that bidder is responsible, which, in turn, GAO does not generally review.

*B-213953 Jan. 9, 1984 84-1 CPD 62
CONTRACTS--OPTIONS--EXERCISABLE AT SOLE DISCRETION OF
GOVERNMENT--BID PROTEST NOT FOR CONSIDERATION*

GAO will not consider protest that agency should have exercised contract option instead of issuing new solicitation where option is exercisable at sole discretion of Govt., since this is matter of contract administration.

*B-213014 Jan. 10, 1984 84-1 CPD 64
BIDDERS--INVITATION RIGHT--FAILURE TO SOLICIT BIDS--INCUMBENT
CONTRACTORS*

Failure of contracting agency to solicit incumbent contractor for current year contract does not constitute

compelling reason to resolicit agency's needs where incumbent has not shown that there was inadequate competition for procurement, that prices obtained were unreasonable, or that failure was result of deliberate or conscious attempt to preclude incumbent from competing.

B-211938 Jan. 11, 1984 84-1 CPD 66

BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--BIDDER ABILITY TO PERFORM

Contention that contract should not be awarded to bidder because it is unable to comply with domestic products requirement is challenge to bidder's responsibility rather than to responsiveness of its bid.

BIDS--ACCEPTANCE TIME LIMITATION--EXTENSION--REQUEST BY AGENCY--PROPRIETY--NONRESPONSIBLE BIDDER

Contracting officials may not request bidder to extend its bid where they determine that bid is unacceptable because bidder is nonresponsible.

CONTRACTS--AWARDS--NOTICE--TO UNSUCCESSFUL BIDDERS--ERRONEOUS STATEMENTS--EFFECT ON AWARD

Defects in required notice to unsuccessful bidders are generally considered minor procedural deviations on part of agency of type that do not affect legality of agency action absent showing of prejudice.

CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD

Legality of contract award is not affected even if contracting officer erroneously decided to make award during pendency of protest.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION

Under significant issues exception to our timeliness rules, GAO will consider otherwise untimely raised issue only if issue is both significant to procurement practice or procedure because of its widespread interest to procurement community and is one that we have not previously considered.

B-211938 Jan. 11, 1984 84-1 CPD 66 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that agency lacked authority to amend IFB to restrict procurement to bids offering domestic products is untimely where protest was not filed until after bid opening. GAO's Bid Protest Procedures require that protests based on solicitation improprieties apparent prior to bid opening must be filed prior to bid opening to be timely.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--CERTIFICATE OF
COMPETENCY REQUIREMENT

It is responsibility of small business concern found non-responsible to file for COC with SBA. GAO will not review responsibility determination where firm fails to file for COC.

B-213242 Jan. 12, 1984 84-1 CPD 67
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest against rejection of bid is dismissed since agency's subsequent cancellation of solicitation makes consideration of protest academic.

B-213621.2 Jan. 12, 1984 84-1 CPD 68
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Contractor's complaint concerning allegedly improper administration of its contract is not matter for review under GAO's Bid Protest Procedures, but instead should be pursued under contract's disputes procedures.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Protester's allegation that manufacturer of parts would not agree to supply parts directly to prospective bidders is private matter between parties not for consideration by GAO.

B-211350 Jan. 16, 1984 84-1 CPD 71
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--ADMINISTRATIVE
DETERMINATION--REASONABLE BASIS

Protest alleging that work covered by contract modification (which was transferred from protester's terminated for convenience contract) exceeded scope of initial competition will not be considered since circumstances justified sole-source procurement because agency knew of only one source which could reasonably be expected to deliver required services timely.

B-212194.2 Jan. 16, 1984 84-1 CPD 72
BIDS--SIGNATURES--STATUS OF BIDDER--DE FACTO CORPORATION

Bid submitted in corporate name may be accepted even though firm became incorporated after bid opening since firm was estopped under applicable state law from denying its corporate existence and award to bidder would be award to same entity which submitted bid and would thus not undermine competitive bidding process.

B-212743 Jan. 16, 1984 84-1 CPD 73
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

Protester alleging that IFB cook-to-order requirements were ambiguous is actually complaining about reasonableness of requirements. Protester has failed to demonstrate clearly that contracting agency's requirements have no reasonable basis.

CONTRACTS--DAMAGES--LIQUIDATED--ACTUAL DAMAGES V. PENALTY--
PRICE DEDUCTIONS--REASONABLENESS

Where protester challenges quality assurance provisions that monetarily penalize contractor by alleging disparity in treatment between contractor-operated facility and military-operated facility and Army advances rational basis for distinction and penalties are based on importance of requirement violated, there is no basis for our Office to question these provisions.

*B-211053.2, B-211053.3 Jan. 17, 1984 84-1 CPD 74
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSIONS
WITH ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS*

Discussions were meaningful where agency asked questions which led offeror to deficient areas of its proposal and provided offeror opportunity to revise proposal in response to discussions.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

Agency decision to exclude offeror from competitive range is proper where offeror's technical proposal was unacceptable and so deficient as to require major revisions before it could be made acceptable.

Agency properly removed offeror from competitive range where, after discussions, its proposal was found to be technically unacceptable.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester has not carried burden of proving that agency leaked confidential source of supply for component where protester has provided only circumstantial evidence and agency has conducted investigation in which all personnel have denied leaking information.

*B-211617 Jan. 17, 1984 84-1 CPD 75
BIDS--LATE--MISHANDLING DETERMINATION--UNNECESSARY--RECEIPT
OF BID AT GOVERNMENT INSTALLATION, ETC.--AFTER BID OPENING*

Where only documentary evidence as to time of receipt of bid at Govt. installation shows it was received after bid opening, it is not necessary to reach issue of Govt. mishandling.

*B-212358 Jan. 17, 1984 84-1 CPD 76
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ADDITIONAL ROUNDS--DENIAL PROPRIETY*

Change made in protester's best and final offer was not subject to resolution through mere clarification of

offeror's intent, but instead would have required reopening of discussions, and agency was not required to reopen discussions for this purpose.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--DISCUSSIONS--ALL OFFERORS REQUIREMENT

Where agency found no uncertainties in those offers included in competitive range and determined that no oral or written discussions were necessary because of high level of acceptability of offers, agency's request for best and final offers was sufficient to satisfy the requirement for discussions in negotiated procurement.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--"MOST ADVANTAGEOUS TO GOVERNMENT"

GAO will not object to agency's conclusion that selection of offeror which received highest total technical and cost score was not in best interests of Govt. where technical proposals were not rescored after receipt of best and final offers because no changes in proposals were solicited or expected, but offeror nevertheless changed its proposal in manner which raised serious concerns about acceptability of proposal.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--CRITERIA--APPLICATION OF CRITERIA

Record does not support protester's contention that its lack of Washington representative became critical factor in agency's decision to reject its offer in favor of higher priced one. Moreover, in weighing advantages of one proposal over another, agency properly could give some consideration to protester's lack of Washington representative since it was reasonably related to evaluation factors contained in solicitation.

*B-212589, B-212611 Jan. 17, 1984 84-1 CPD 77
PURCHASES--SMALL--PROCEDURES--COMPLIANCE*

Although agency (using small purchase procedures and having obtained oral quotations from manufacturer on basis of its model numbers as specified by agency) is required in inter-

est of fair competition to advise manufacturer if agency decides to purchase nonequivalent items from another source, protest is denied where record fails to clearly establish that items acquired from another source were not equal to specified model numbers.

B-213822 Jan. 17, 1984 84-1 CPD 79
CONTRACTS--DAMAGES--LIQUIDATED--REMISSION--ADMINISTRATIVE
RECOMMENDATION--DENIAL

Request for remission of liquidated damages assessed by Dept. of Army must be denied in absence of favorable recommendation by head of contracting agency involved.

B-213898 Jan. 17, 1984 84-1 CPD 80
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--RULE--
EXCEPTIONS--APPLICABILITY

Protest against rejection of late proposal is summarily denied where circumstances are not within exceptions of "Late Proposal" clause of solicitation which, contrary to protester's contention apply to first-step proposals under two-step procurement.

B-211105.2 Jan. 19, 1984 84-1 CPD 81
ATTORNEYS--FEES--EQUAL ACCESS TO JUSTICE ACT--RECOVERY OF
FEES, ETC. INCURRED IN PURSUING BID PROTEST--NOT AUTHORIZED
BY ACT--ADVERSARY ADJUDICATION REQUIREMENT

Equal Access to Justice Act provides for award of attorneys' fees and costs to prevailing party in "adversary adjudications," as defined in Administrative Procedure Act. GAO bid protests, however, are not conducted under latter act, which excludes legislative branch, so attorneys' fees and costs may not be awarded to prevailing party in bid protest.

B-212229 Jan. 19, 1984 84-1 CPD 82
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--ORDER OF IMPORTANCE

Protest that award should have been made to lower priced proposal since it was evaluated as technically "good" is without merit where solicitation stated that cost proposal

and technical proposal evaluation would be considered equal in importance and contracting officer determined that technical superiority of awardee's proposal outweighed cost differential between proposals.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest allegations first raised in protester's comments on agency report are untimely where they are not filed within 10 working days after a debriefing at which basis of protest were made known to protester.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest after award that price should have been more significant as basis for award than technical factors is untimely where request for proposals stated that two would be considered equal in importance.

*B-212783, B-212907 Jan. 19, 1984 84-1 CPD 83
BIDS--RESPONSIVENESS--TEST TO DETERMINE--UNQUALIFIED OFFER
TO MEET ALL SOLICITATION TERMS*

Where bidder takes no exception in its bid to solicitation requirement that hand tools be manufactured wholly in U.S., and bid samples supplied with bid do not indicate nonconformance with this requirement, GAO has no basis to conclude that bid is nonresponsive.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Bidder's ability to supply items manufactured wholly in U.S. concerns bidder's responsibility. GAO reviews affirmative determinations of responsibility only upon showing of possible fraud or badfaith on part of procuring officials or if definitive responsibility criteria allegedly were misapplied.

*B-212783, B-212907 Jan. 19, 1984 84-1 CPD 83 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--
INDEPENDENT INVESTIGATION AND CONCLUSIONS--LIMITATIONS*

GAO does not conduct investigations in connection with its bid protest function for purpose of establishing validity of protester's assertions.

*B-213040 Jan. 19, 1984 84-1 CPD 84
ADVERTISING--ADVERTISING V. NEGOTIATION--NEGOTIATION PROPRIETY--
SMALL BUSINESS CONCERNS--SET-ASIDES*

Protester's complaint that procuring agency wrongfully denied protester opportunity to enter into negotiations with agency to discuss mistakes in protester's bid is without merit since method of procurement used was small business restricted advertising, method permitted under negotiation authority in which formal advertising procedures are followed to select contractor among small business concerns.

BIDS--MISTAKES--WITHDRAWAL--INTENDED BID PRICE UNCERTAINTY

Where low bidder alleges mistakes in bid prices in response to verification request, but fails to submit adequate evidence clearly establishing its intended bid, agency reasonably allowed withdrawal, but not correction.

*B-213099 Jan. 19, 1984 84-1 CPD 85
CONTRACTS--PROTESTS--ALLEGATIONS--ERRONEOUS AGENCY ADVICE--
NOT PREJUDICIAL*

Protest that agency improperly failed to advise protester of deficiencies in its proposal is denied where protester's initial proposal was acceptable and within competitive range and its weaknesses resulted from its own lack of diligence, competence or inventiveness.

*B-210954 Jan. 20, 1984 84-1 CPD 87
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED*

The agency properly rejected an offer that did not contain either the data required by the solicitation or an assigned code number which would have relieved the offeror of the obligation to supply the data.

*B-210954 Jan. 20, 1984 84-1 CPD 87 - Con.
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
MANUFACTURER, AUTHORIZED DEALER, ETC. REPRESENTATIONS*

Agency acted properly by rejecting low offer without contacting offeror to allow it opportunity to provide data required to be submitted with offers in view of solicitation provision stating that offers submitted without this data would be found technically unacceptable.

CONTRACTS--AWARDS--ADMINISTRATIVE DETERMINATION--CONCLUSIVENESS

There is no basis for GAO to object to the award of a contract based on the protester's contention that the agency improperly awarded the contract to a firm that intended to supply a part different from the part listed in the solicitation, since the awardee's data shows that it will supply parts manufactured by a firm which had previously supplied the item and the contracting officer reasonably determined that based on this fact and on his independent knowledge of the acceptability of the part, the awardee's offer was acceptable.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester contending that agency improperly failed to consider two timely submitted offers does not satisfy its burden of proof merely by providing receipts for packages it mailed to the agency that allegedly contained, among other things, the two offers where the agency states that it did not receive one offer from the protester and received the offer after the closing date for receipt of quotations.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest alleging that various solicitations for spare parts were defective because they required non-manufacturers offering to supply parts made by approved manufacturers listed in solicitation to submit

documentation showing that they were either authorized dealers for listed manufacturer's parts or that they intended to obtain parts from manufacturer listed in solicitation or authorized dealer is untimely where alleged defect was apparent from face of solicitation but protest was not filed until after closing date for receipt of quotations.

PURCHASES--SMALL--AWARDS--PROCEDURAL DEFICIENCIES--NOT PREJUDICIAL TO PROTESTER

Contention that agency improperly contacted certain offerors to allow them opportunity to submit required data under two of protester solicitations without allowing protester a similar opportunity is without merit where record shows that agency sought to verify data supplied with offerors' bids but did not permit these offerors to submit any additional data.

*B-212628, B-212628.2 Jan. 20, 1984 84-1 CPD 88
CONTRACTS--PROTESTS--ALLEGATIONS--ERRONEOUS AGENCY ADVICE--
NOT PREJUDICIAL*

Where protesters allege that procuring activity failed to point out deficiencies in protesters' initial proposals, but record shows that even if agency discussed deficiencies, protesters would not receive award since, subsequent to discussions, agency found that protesters failed to demonstrate adequate experience under applicable evaluation factor, agency's alleged failure to clearly communicate deficiencies in protesters' initial proposals did not prejudice protesters.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
WITHDRAWAL--PROPRIETY*

Cancellation of small business set-aside RFP and resolicitation under unrestricted RFP was proper where all small business proposals were found unacceptable.

*B-212829 Jan. 20, 1984 84-1 CPD 89
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

Speculation that contracting agency disclosed protester's status as low offeror to competitor before soliciting best and final offerors, which is denied by contracting agency, does not meet protester's burden of proof.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest made after closing date for receipt of best and final offers that solicitation of best and final offers was improper is untimely.

*B-211710 Jan. 23, 1984 84-1 CPD 93
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--
GUIDELINES*

Protest of GSA decision to perform operations and maintenance services in-house based on cost comparison rather than to contract for services is denied where protester has not shown that any agency errors affect evaluation result.

*B-212072 Jan. 23, 1984 84-1 CPD 94
CONTRACTS--FEDERAL SUPPLY SCHEDULE--PRICES--REDUCTIONS--
AFTER AWARD*

Agency properly evaluated vendor's price on basis of reductions in FSS prices which agency had been advised were available at time of award.

*CONTRACTS--FEDERAL SUPPLY SCHEDULE--TO OTHER THAN THE LOW
BIDDER OR OFFEROR--JUSTIFICATION*

RFQ to obtain information from multiaward FSS contractors does not constitute IFB, and award to vendor offering lowest prices for items meeting RFQ specifications is not required in view of Govt.'s alternative under Federal Property Management Regulations to justify purchase of higher priced items.

B-212072 Jan. 23, 1984 84-1 CPD 94 - Con.
CONTRACTS--FEDERAL SUPPLY SCHEDULE--TO OTHER THAN LOW BIDDER
OR OFFEROR--JUSTIFICATION

Purchase of other than lowest priced equipment from FSS is justified on basis of compatibility and of specific and particular features which facilitate more efficient and effective staff use of equipment.

PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PRICES--
PROCUREMENT AT OTHER THAN LOWEST FSS PRICE--JUSTIFICATION
REQUIREMENT

Procuring agency is not required to include justification for purchase of higher priced FSS items in RFQ; justification properly may be based on features not called for in RFQ specifications

B-212569, B-213262 Jan. 23, 1984 84-1 CPD 95
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest that bidder does not comply with Buy American provisions of solicitation concerns matter of responsibility which GAO will not review and contractor's compliance with certification concerns administration of contract which is not for resolution under GAO Bid Protest Procedures.

B-212594 Jan. 23, 1984 84-1 CPD 96
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION
BY GAO

Questions regarding bond requirements which are implemented after contract award are matters of contract administration not cognizable under our Bid Protest Procedures.

OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--POLICY
MATTERS--NOT FOR GAO REVIEW

As general rule, whether contracting agency should contract out for any particular work or perform it in-house is policy matter which GAO will not review. Only exception to this rule is where agency issues

competitive solicitation for purpose of ascertaining cost of contracting out. Although IFB was issued here, it was not for purpose of ascertaining cost of contracting. Therefore, exception is not applicable.

B-212715 Jan. 23, 1984 84-1 CPD 97
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determinations of responsibility except under limited circumstances.

B-212757 Jan. 23, 1984 84-1 CPD 98
BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--BIDDER
NOT TIMELY SOLICITED, ETC.

Resolicitation of procurement is not recommended since there is no evidence of conscious or deliberate attempt to preclude protester from competing and adequate competition and reasonable prices were obtained.

B-213130 Jan. 23, 1984 84-1 CPD 99
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging defect apparent on face of solicitation which is filed with proposal does not constitute timely protest to contracting agency.

B-213622 Jan. 23, 1984 84-1 CPD 100
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging that solicitation improperly required offerors to submit representative samples of their products is untimely since alleged impropriety was apparent prior to closing date for receipt of initial proposals, but protest was not filed until after that date.

*B-213662 Jan. 23, 1984 84-1 CPD 101
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO more than 10 working days after protester learns of initial adverse agency action on its earlier protest filed with contracting agency is untimely and will not be considered on merits.

*B-213830 Jan. 23, 1984 84-1 CPD 102
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES*

Protest alleging that personnel who formerly worked for protester improperly used proprietary material to prepare awardee's bid is dispute between private parties which GAO will not consider and does not constitute violation of Certificate of Independent Price Determination.

*B-213947 Jan. 23, 1984 84-1 CPD 103
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--WHAT CONSTITUTES NOTICE*

Protest against agency decision to conduct sole-source negotiations is untimely because it was filed more than 10 working days after announcement of decision in Commerce Business Daily (CBD). Protester is charged with constructive notice of CBD announcement and protest was not filed within 10 working days after basis of protest was known or should have been known. 4 C.F.R. 21.2(b)(2) (1983).

*B-214009 Jan. 23, 1984 84-1 CPD 104
BIDS--PRICES--BELOW COST--EFFECT ON BIDDER RESPONSIBILITY*

No basis exists to preclude contract award merely because low bidder submitted below-cost bid. Below-cost bid presents question of bidder's responsibility and GAO does not review affirmative determinations of responsibility except in limited circumstances.

*B-214009 Jan. 23, 1984 84-1 CPD 104 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Small business size and size standards are determined by SBA, not GAO.

*B-214050 Jan. 23, 1984 84-1 CPD 105
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging improprieties in IFB apparent prior to bid opening must be filed before that date.

*B-214053 Jan. 23, 1984 84-1 CPD 106
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest against agency's failure to refer negative determination of small business protester's responsibility to SBA is untimely when filed more than 10 working days (plus reasonable delivery time) after agency sent notice to protester of award to another.

*B-214059 Jan. 23, 1984 84-1 CPD 107
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest against affirmative determination of responsibility is dismissed because GAO does not review contracting officer's affirmative determination of responsibility except under limited circumstances not applicable here.

*B-214097 Jan. 23, 1984 84-1 CPD 108
CONTRACTS--PROTESTS--AUTHORITY TO CONSIDER--FEDERAL RESERVE
SYSTEM--MEMBER BANK CONTRACTS*

GAO's bid protest jurisdiction is based upon its account settlement authority. Although GAO is required to audit accounts of Federal Reserve System banks, it lacks authority to settle accounts. Accordingly, GAO will not decide protest against contract award by Federal Reserve System bank.

*B-214097 Jan. 23, 1984 84-1 CPD 108 - Con.
REPORTS--ADMINISTRATIVE--CONTRACT PROTEST--REPORT NOT
REQUESTED BY GAO*

Where it is clear from protester's initial submission that protest involves matters which GAO does not consider, GAO will dismiss protest without requesting agency report.

*B-214104 Jan. 23, 1984 84-1 CPD 109
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--POLICY
MATTERS--NOT FOR GAO REVIEW*

Determination under OMB Circular No. A-76 to contract for services rather than have them performed in-house is matter of executive branch policy not reviewable pursuant to bid protest filed by union local representing Federal employees.

*B-211549 Jan. 24, 1984 84-1 CPD 110
BIDS--PRICES--REASONABLENESS--PRICE ANALYSIS*

Bid submitted by for-profit commercial concern may be unreasonably high, even if shown to accurately reflect costs unique to that bidder plus moderate profit, if marketplace which includes nonprofit associations can satisfy Govt.'s needs for substantially less--here, 38 percent.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT
INTEREST CRITERION*

Third low bidder protesting that low bid should be rejected is "interested party" under GAO's Bid Protest Procedures where second low bid has expired.

*OFFICERS AND EMPLOYEES--CONTRACTING WITH GOVERNMENT--COMPELLING
REASONS*

Agency did not abuse its discretion in determining that it may accept low bid for sports officiating services from organization it regards as substantially owned or controlled by Govt. employees where

price of other bidder is 38 percent higher and in all likelihood same individuals would perform this essentially part-time work regardless of which bidder was awarded contract.

Protest that performance of sports officiating services by active duty military and by civilian Govt. personnel would violate dual compensation laws is denied where protester has not met its burden of proof.

*B-212015.2 Jan. 24, 1984 84-1 CPD 111
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY*

Protester has burden of affirmatively proving its case. GAO finds that protester has furnished no evidence to show that contracting agency's evaluation of technical proposals was unreasonable or contrary to solicitation's evaluation criteria. GAO also finds that protester has failed to establish any prejudice to it from delays that occurred during course of protested procurement or that any offeror's offer was revealed to another offeror during procurement.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Under GAO's Bid Protest Procedures, 4 C.F.R. 21.1(b)(1) (1983), alleged improprieties in negotiated procurements which do not exist in initial solicitation, but which are subsequently incorporated therein must be protested no later than next closing date for receipt of proposals following incorporation. Protester's objection to contracting agency's treatment of travel costs in amendment to solicitation raised for first time in protester's Oct. 31, 1983, comments on agency's protest reports is untimely since closing date set by amendment calling for revised cost proposals was July 18, 1983.

*B-212038, B-212038.2 Jan. 24, 1984 84-1 CPD 112
BIDS--INVITATION FOR BIDS--CANCELLATION--JUSTIFICATION--
UNREASONABLENESS OF PRICES BID*

GAO has no basis to object to agency's rejection of protester's bid, submitted in brand-name-or-equal procurement, on basis that bid was unreasonably high when protester's bid was 48 percent higher than nonresponsive bid submitted by only other brand-name bidder and protester's price did not reflect economies of scale which might reasonably be expected since this procurement was for quantity approximately 1,500 percent greater than that of previous contract under which protester had been paid unit price comparable to its present bid.

*BIDS--INVITATION FOR BIDS--CANCELLATION--RESOLICITATION--
AUCTION ATMOSPHERE NOT CREATED*

Impermissible auction situation is not created where advertised solicitation is canceled because bid prices received were excessive and agency then uses negotiated solicitation upon resolicitation.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against alleged improprieties in solicitation which is filed after closing date for receipt of proposals is untimely.

*B-212267, B-212267.2 Jan. 24, 1984 84-1 CPD 113
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--ADMINISTRATIVE DETERMINATION*

GAO will not object to solicitation specification as premised on erroneous technical assumptions since contracting agency has broad discretion in determining its needs and it has not been shown that agency's technical assumptions are in error. Fact that protester disagrees with agency's technical assumptions does not invalidate determination.

*B-212267, B-212267.2 Jan. 24, 1984 84-1 CPD 113 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--EVALUATION
CRITERIA--TECHNICAL MERIT--RELATIVE IMPORTANCE*

Where solicitation provides specific weightings for evaluating technical, experience and price considerations, and states which technical elements will be given greater weight in evaluation, solicitation properly apprises offerors of criteria to be employed in evaluation of proposals.

*B-213796.2 Jan. 24, 1984 84-1 CPD 114
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest alleging that apparent low bidder on solicitation to operate base laundry facility failed to perform satisfactorily on similar contract at another base and therefore should not be considered for award under present solicitation is dismissed since matter involves question of bidder's responsibility and GAO does not review affirmative determinations of responsibility except under circumstances not present here.

*B-214035 Jan. 24, 1984 84-1 CPD 115
CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED--PROTEST
NOT FOR CONSIDERATION ON THE MERITS*

When it is clear from protester's initial submission that protest is without legal merit, GAO will neither request agency report nor hold conference on protest, since no useful purpose would be served.

*TIMBER SALES--BIDS--PROCEDURES--ORAL AUCTION--WRITTEN
SEALED BIDS--PRICE*

Regulations for competitive sales of National Forest timber clearly require that as prerequisite to participation in oral auction, bidder must submit written sealed bid at least equal to minimum advertised price. Sealed bid with no price indicated does not meet this requirement, and Forest Service's acceptance of it, if no higher bids were forthcoming at oral auction, would not result in binding contract.

*B-211228 Jan. 25, 1984 84-1 CPD 116
BIDS--PREPARATION--COSTS--NONCOMPENSABLE*

Claim for bid preparation costs is disallowed where low bid could not be accepted, since its heavily front-loaded base period price exceeded available agency funds.

BIDS--UNBALANCED--PROPRIETY OF UNBALANCE--"MATHEMATICALLY UNBALANCED BIDS"--WHAT CONSTITUTES

Protest is sustained where agency improperly rejected low bid for rental of police cars as materially unbalanced since bid was not even mathematically unbalanced despite heavily "front-loaded" base period price. Bidder would not enjoy windfall or own and use cars subsequent to contract period should options not be exercised.

*B-211755 Jan. 25, 1984 84-1 CPD 117
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER*

Where protester's allegation that procuring agency improperly intends to award contract to bidder that is substantially owned or controlled by Govt. employees is not supported by evidence in record, protester has failed to meet its burden of proof to show that award to that firm would be contrary to regulatory provision which generally precludes entering into contracts with firms substantially owned or controlled by Govt. employees.

*B-213121 Jan. 25, 1984 84-1 CPD 118
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS REQUIREMENT--OVERSTATEMENT OF MINIMUM NEEDS*

Protest against IFB requirement for use of plywood only in construction of kitchen cabinets is sustained where agency fails to rebut protester's case indicating that particle board cabinets could also meet Govt.'s minimum needs.

*B-213792 Jan. 25, 1984 84-1 CPD 119
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest against solicitation purchase description received after bid opening is untimely.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--DIRECT INTEREST CRITERION

Protester who is not one of bidders allegedly rejected as nonresponsive is not interested party to protest rejection of those bids.

GENERAL ACCOUNTING OFFICE--JURISDICTION--ANTITRUST MATTERS

GAO does not consider allegations of antitrust violations.

*B-212586 Jan. 26, 1984 84-1 CPD 120
BUY AMERICAN ACT--DEFENSE DEPARTMENT PROCUREMENT*

General Services Administration properly restricted solicitation for scissors and shears to domestic items where appropriations act applicable to the primary user, the Dept. of Defense (DOD), precludes DOD from purchasing hand or measuring tools manufactured in a foreign country.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SMALL BUSINESS SET-ASIDES

Where an invitation properly solicits domestic items only, so that the protester's offer of foreign-made items could not be accepted in any event, protester is not interested party under GAO's Bid Protest Procedures to complain about the small business and labor surplus area set-aside restrictions for certain items.

*B-212609 Jan. 26, 1984 84-1 CPD 121
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--PRIOR
GAO CONSIDERATION OF SAME ISSUE EFFECT*

Protest filed after bid opening contending that procurement was improperly set aside for small business is untimely and will not be considered under the exception to timeliness rules for significant issues since issue raised has been considered on merits in previous decisions.

*CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SMALL
BUSINESS SET-ASIDES*

Protest by a non-small business firm that specifications in small business set-aside were "written around" products of a particular small business manufacturer will not be considered since protester is ineligible for award and thus is not an interested party to raise such issue.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
PRICE REASONABLENESS--ADMINISTRATIVE DETERMINATION*

Contention that sole responsive bid received is unreasonably high is without merit where agency determined that bid was fair and reasonable and protester has not shown that agency's determination was unreasonable.

*B-212933 Jan. 26, 1984 84-1 CPD 122
CONTRACTS--FEDERAL SUPPLY SCHEDULE--TO OTHER THAN LOW BIDDER
OR OFFEROR--JUSTIFICATION*

Protest that agency improperly issued delivery order to higher priced Federal Supply Schedule contractor is denied. Record shows that protester's offered equipment did not meet 1-minute memory requirement set forth in request for quotations and GAO cannot find that award to higher priced offeror which met all specifications was unreasonable in such circumstances.

*B-212933 Jan. 26, 1984 84-1 CPD 122 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF QUOTATIONS*

Protest that specifications set forth in request for quotations contain alleged impropriety is dismissed as untimely where this protest issue was raised for first time in offer submitted in response to request for quotations. Such issues are to be filed prior to closing date in accord with sec. 21.1(b)(1) of GAO Bid Protest Procedures. 4 C.F.R. 21.1(b)(1) (1983).

*B-213499 Jan. 26, 1984 84-1 CPD 124
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--FAILURE TO REFER TO
SBA*

Protest against contracting officer's rejection of small business bidder as nonresponsible is sustained since contracting officer did not refer matter to Small Business Administration (SBA) as required by law. GAO recommends referral to SBA and termination of contract awarded to another bidder should SBA determine that low bidder is responsible.

*B-212923 Jan. 27, 1984 84-1 CPD 125
BIDS--MISTAKES--CORRECTION--EVIDENCE OF ERROR--SUFFICIENCY*

GAO cannot question procuring agency's refusal to permit correction of bid mistake alleged after bid opening where documentation submitted in support of claim is not sufficient to clearly and convincingly establish bid price.

*BIDS--MISTAKES--EVIDENCE OF ERROR--"CLEAR AND CONVINCING
EVIDENCE" OF ERROR AND INTENDED BID PRICE*

In order to have error in bid corrected after bid opening, bidder must submit clear and convincing evidence of error and intended bid price. Moreover, weight given to such evidence is question of fact

to be considered administratively by procuring agency, whose decision will not be disturbed by our Office unless it is without reasonable basis.

BIDS--MISTAKES--WAIVER, ETC. OF ERROR--"INTENDED BID" STILL LOWEST--EVIDENCE OF SUFFICIENCY

Where bidder alleges mistake after bid opening, it is not then generally free to decide to waive its claim. Nevertheless, waiver will be permitted if it is clear that intended bid would have been lowest even though intended bid could not be clearly proven for purpose of bid correction.

*B-210182.2, B-210182.3 Jan. 30, 1984 84-1 CPD 126
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ISSUES IN LITIGATION*

GAO will not consider merits of request for reconsideration where material issues are before court of competent jurisdiction and court has not expressed interest in obtaining GAO's views.

*B-212385, B-212385.2 Jan. 30, 1984 84-1 CPD 127
BIDS--MISTAKES--CORRECTION--INTENDED BID PRICE--ESTABLISHED
IN BID*

Agency properly permitted bidder to correct omitted price after bid opening where bidder submitted price for same item in another part of IFB.

BIDS--SIGNATURES--STATUS OF BIDDER--DE FACTO CORPORATION

Contract award may be made to bidding entity which incorporated after bid opening since same firm which submitted bid will perform contract and firm would not be permitted to avoid Govt.'s acceptance of its bid.

*CONTRACTS--NEGOTIATION--NOVATION AGREEMENTS--EFFECT ON OFFERS
OR PROPOSALS*

Contract award may be made to bidding entity which subsequent to bid opening sold all its stock to

nonbidding entity, where bidding entity still exists and will perform contract.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

Protester has not met its burden of proving that bidder misrepresented that it had no affiliates.

*B-212753 Jan. 30, 1984 84-1 CPD 128
CONTRACTS--PROTESTS--ABEYANCE PENDING COURT ACTION*

GAO will not consider protest where material issues are before court of competent jurisdiction and court has not expressed interest in GAO's decision.

*B-212895.2 Jan. 30, 1984 84-1 CPD 129
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE OF PROPOSALS*

Protest concerning alleged solicitation improprieties is untimely under GAO Bid Protest Procedures which requires protests based upon alleged solicitation improprieties that are apparent prior to closing date for receipt of proposals to be filed before that date and protests based upon alleged improprieties which do not exist in initial solicitation that are subsequently incorporated therein to be protester not later than next closing date for receipt of proposals.

*B-212897, B-212897.2 Jan. 30, 1984 84-1 CPD 130
BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--ADEQUACY
DETERMINATIONS*

Procuring agency determination, based upon preaward survey, that qualified products list firm's plant, personnel and manufacturing processes are essentially those as originally qualified, so that complete re-evaluation is not required, involves matter of business judgment which will not be questioned absent showing of fraud or bad faith.

*B-212897, B-212897.2 Jan. 30, 1984 84-1 CPD 130 - Con.
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--CHANGES, REVISIONS,
ETC.--AFTER PREQUALIFICATION PROCEDURE*

Where, under qualified products list (QPL) procedures, ownership of qualified producer has changed, but there has been no change in plant location, personnel, or production processes of qualified plant, that firm's failure to obtain reevaluation of its QPL status prior to bid opening as required by DAR 7-2003.6 can be waived as minor informality.

BIDS--RESPONSIVENESS--WAIVER OF REQUIREMENT

Bid submitted under qualified products list (QPL) procurement which fails to identify manufacturer and applicable test number in appropriate space in QPL clause required by DAR 7-2003.6, but which identifies manufacturer elsewhere, designates manufacturer's qualified plant as place of manufacture, and provides other information which permits procuring agency to readily determine missing items, is responsive to IFB and omissions may be waived as minor informalities.

*B-212957 Jan. 30, 1984 84-1 CPD 131
CONTRACTORS--CONFLICT OF INTEREST--ORGANIZATIONAL--AGENCY
DETERMINATION--REASONABLE BASIS*

Review of determination of organizational conflict of interest is limited to determining whether determination has reasonable basis.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest made more than 10 days after protester knew or should have known basis for protest is untimely.

*B-213233.2 Jan. 30, 1984 84-1 CPD 132
CONTRACTS--PROTESTS--RECONSIDERATION--OF COURT-REQUESTED
DECISION*

GAO will not reconsider prior decision rendered in response to expression of interest from court unless court expresses interest in reconsideration of decision.

B-214014 Jan. 30, 1984 84-1 CPD 139
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Protest questioning contracting officer's affirmative determination of responsibility is dismissed because GAO will not review affirmative determination of responsibility in absence of showing of possible fraud or misapplication of definitive responsibility criteria in solicitation, circumstances not present here.

B-214078 Jan. 30, 1984 84-1 CPD 133
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--GENERAL V.
SPECIFIC--EFFECT ON RESPONSIBILITY

Where solicitation does not require any specific state license, alleged failure of bidder to possess license is not proper basis for nonresponsibility determination.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review affirmative determination of responsibility absent showing of possible fraud or bad faith by procurement officials or misapplication of definitive responsibility criteria.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO will not consider protest concerning size status of bidder since exclusive authority for size determinations is statutorily vested in SBA.

B-214150 Jan. 31, 1984 84-1 CPD 134
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
NONAPPROPRIATED FUND ACTIVITIES

Protest of procurement for nonappropriated fund activity is dismissed as GAO has no authority to consider bid protest that does not involve expenditure of appropriated funds.

B-213928 Feb. 1, 1984 84-1 CPD 136
BIDDERS--DEBARMENT--DE FACTO

Denial of opportunity to perform a particular contract does not constitute a de facto debarment, and when contracting agency has advised a small business that if it fills out necessary forms, it will be included on the bidders list for future procurements, GAO will deny protest on this basis.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--FRAUD OR BAD FAITH ALLEGED--EVIDENCE SUFFICIENCY

When contracting agency routinely reviews all procurements for possible inclusion in its 8(a) program under the Small Business Act, a decision to set aside a particular procurement appears to be the result of following such procedures, and does not constitute evidence of bad faith.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--REVIEW BY GAO

GAO generally does not review agency decisions to set aside or not to set aside particular procurements under section 8(a) of the Small Business Act, since contracting officer is authorized to let contracts "in his discretion." Only exceptions are when a protester shows possible fraud or bad faith on the part of contracting officials or alleges that the Small Business Administration did not follow its own regulations.

B-213940 Feb. 1, 1984 84-1 CPD 137
CONTRACTS--AWARDS--VALIDITY--PROCEDURAL DEFICIENCIES--NOTICE OF AWARD

Contracting officer's alleged failure to provide unsuccessful bidder notice of award of contract is procedural deficiency which does not affect the validity of the award.

*B-213940 Feb. 1, 1984 84-1 CPD 137 - Con.
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

The Small Business Administration, not the General Accounting Office, has the statutory authority to conclusively determine whether a concern is small business for the purposes of a particular procurement.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION--CONTROLLING
DATE FOR DETERMINATION*

GAO cannot question Small Business Administration Size Appeals Board's interpretation of Small Business Administration regulation.

*B-214116 Feb. 1, 1984 84-1 CPD 138
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED--STATE, ETC. LAW COMPLIANCE*

GAO will not consider an allegation that a firm is not in compliance with a solicitation's general licensing requirement because this is a matter to be resolved between state and local authorities and the contractor and only in limited situations concerns an affirmative finding of responsibility which is not reviewed by GAO except in circumstances not present here.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

GAO does not consider small business size status since by law conclusive authority over the matter is vested in the Small Business Administration.

*B-211922, B-211922.2 Feb. 2, 1984 84-1 CPD 140
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protests alleging that awardee's history of late performance should have resulted in a finding of nonresponsibility or in a penalty in the technical evaluation of awardee's proposal are dismissed in

part and denied in part. Regarding charges that awardee was nonresponsible, protests are dismissed since GAO no longer reviews an agency's affirmative determination of responsibility, except in circumstances not present in this case. Regarding the technical evaluation, protests are denied because record shows that awardee's late performances on previous contract were indeed considered under the "Experience" and "Performance" evaluation categories set forth in the RFP.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSIONS WITH ALL OFFERORS REQUIREMENT--FAILURE TO DISCUSS--SITUATIONS NOT REQUIRING DISCUSSION

Award of a cost-reimbursement contract without discussions was proper where record supports agency's determination that proposed costs were reasonable, three technically acceptable offers were received, awardee was highest rated both technically and on the basis of evaluated costs after thorough cost analysis was performed, and RFP notified all offerors that award on the basis of initial proposals was a possibility.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--ADMINISTRATIVE DISCRETION--COST/PRICING EVALUATION

Protests that Navy source selection officials were required to consider Defense Contract Audit Agency audit reports on each cost proposal are denied. Generally, the extent to which proposed costs will be examined is a matter within the contracting agency's discretion. The Defense Acquisition Regulation (DAR) does not mandate the use of such audit material, but rather indicates that such audits are only advisory in nature and final determination is to be made by contracting officer, and there was no indication in RFP that such audits were required. While internal Navy source selection plan contemplated that audits would be performed and considered, the source selection plan was for use and guidance of Navy procurement and source selection officials, does

not have force and effect of law and, therefore, provides our Office no basis for invalidating the award.

Protests alleging that cost evaluations were arbitrary and capricious are denied. Protesters must carry burden of proving their assertions since GAO does not conduct independent investigation as part of bid protest function. Basically, protesters disagree with Navy's manpower and cost estimates which formed basis for cost evaluations. However, protesters have provided no evidence to show that Navy estimates were erroneous and our review of cost evaluation materials shows that estimates were reasonably computed and evaluations were neither arbitrary nor capricious.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

Protests that technical evaluations of proposals were conducted improperly and that award was not made in accord with the evaluation scheme set forth in the RFP are denied. GAO's in camera review of all of the evaluation materials in light of issues raised by protests reveals no basis for finding that agency's evaluation was arbitrary or unreasonable or that evaluation/selection officials abused their discretion. Record supports contracting agency's finding that awardee's proposal was superior to either protester's proposal and that evaluations were performed in strict conformance with evaluation scheme set forth in RFP.

Protest that evaluation of proposals did not consider protester's advantage over awardee because protester's drydock was much closer to berth site for ships to be repaired is denied where record shows that proximity of drydock was considered as part of "Resource Availability" factor listed in RFP and that it was considered a strength of protester's proposal and a weakness of awardee's proposal.

*B-211922, B-211922.2 Feb. 2, 1984 84-1 CPD 140 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--DISCLOSURE TO ALL OFFERORS*

Protest that contracting agency improperly down-graded protester's offer in "Cost to Government" and "Cost Realism" areas of evaluation because of lack of documentation to support protester's proposed costs is denied. RFP's directions as to what a cost proposal should contain and how agency would evaluate cost proposals reasonably conveyed to all offerors that supporting documentation was expected and would be used in evaluation of cost proposals.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that agency should have given preference to protester because it is located in a labor surplus area is dismissed in part and denied in part. To the extent that protester contends RFP should have stated preference for labor surplus area concerns in accord with Department of Defense policy, protest is dismissed as untimely because it was filed after closing date for submission of initial proposals. 4 C.F.R. 21.2(b)(1) (1983). To the extent that protester contends that it should have been given preference in evaluation of proposals for labor surplus area status, protest is denied because RFP evaluation scheme made no mention of labor surplus area preference and proposals were evaluated in strict conformity with RFP's stated criteria.

*B-213196.2 Feb. 2, 1984 84-1 CPD 141
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ORIGINAL DECISION RENDERED IN
RESPONSE TO COURT REQUEST--COURT NOT INTERESTED IN GAO
RECONSIDERATION*

GAO will not reconsider a prior decision rendered in response to an expression of interest from a court unless the court expresses an interest in the reconsideration of the decision.

B-213458 Feb. 2, 1984 84-1 CPD 142
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
IN REQUEST FOR BEST AND FINAL OFFERS

Protest against alleged improprieties in a solicitation amendment that also requested best and final offers, filed with the offeror's response to the amendment, is untimely under GAO Bid Protest Procedures.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest based on alleged RFP impropriety that was apparent on the face of the solicitation is untimely since it was not filed prior to the closing date for receipt of initial proposals.

B-213864 Feb. 2, 1984 84-1 CPD 144
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Bidder's ability to perform contract according to specifications is a matter of responsibility and GAO does not review a contracting officer's affirmative determination of responsibility except in limited circumstances not applicable here.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Whether specification requirements are met during performance of contract is a matter of contract administration which GAO will not consider.

B-212984, et al. Feb. 3, 1984 84-1 CPD 145
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
CONTRACT DISPUTES ACT OF 1978

Claims by a contractor against the government "relating to" a contract are properly for processing under the Contract Disputes Act of 1978, rather than for resolution by GAO.

*B-212489 Feb. 6, 1984 84-1 CPD 146
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

GAO will not consider merits of allegations that more restrictive specifications are required to serve the government's interest.

*B-213205 Feb. 6, 1984 84-1 CPD 147
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest to GAO concerning solicitation defect is untimely where firm protested to the contracting agency prior to the closing date for receipt of proposals but did not protest to GAO within 10 working days after closing occurred. Where agency does not take corrective action requested, closing constitutes initial adverse action on the agency-level protest.

*B-213569 Feb. 6, 1984 84-1 CPD 148
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO*

GAO will not review agency determination not to procure services under section 8(a) of Small Business Act because government estimate of in-house cost was lower than prices solicited from firms eligible under section 8(a), absent showing of fraud or bad faith by procurement officials.

*B-213597.2 Feb. 6, 1984 84-1 CPD 149
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--EXHAUSTION OF ADMINISTRATIVE REMEDIES*

A protest of an agency's decision-based on an A-76 cost comparison-to retain in-house the performance of certain services is dismissed as premature where the protester's administrative appeal filed with the contracting officer has not been decided.

*B-212332 Feb. 7, 1984 84-1 CPD 150
BIDS--EVALUATION--BASIS FOR EVALUATION--RELIANCE ON EXPERTS*

Contracting officer acting in good faith has a right to rely on transportation evaluation made by transportation experts; moreover, the contracting officer is not obligated to furnish the protester with a copy of the rate tariff documents used in the transportation evaluation.

*BIDS--RESPONSIVENESS--SOLICITATION REQUIREMENTS NOT SATISFIED--
CONFORMABILITY OF EQUIPMENT, ETC. OFFERED*

Shipping container dimensions which awardee inserted into its bid did not reflect the thickness of the specified container. But given that the inserted dimensions are exactly the same as the internal dimensions of the specified container described in the IFB's packaging data sheet, it is reasonable to conclude that the awardee intended to furnish the specified container. Therefore, the awardee's bid was responsive to the IFB's shipping container requirements.

*B-212516 Feb. 7, 1984 84-1 CPD 151
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH
ALL OFFERORS REQUIREMENT--EXCEPTIONS--OFFERS NOT WITHIN
COMPETITIVE RANGE*

Agency reasonably determined the protester's proposal to supply radio transmitters and receivers technically unacceptable and excluded the proposal from the competitive range where the proposal failed to include information, required by the solicitation, detailing the design and engineering effort necessary to meet performance specifications in the solicitation, and this failure could be cured only by major proposal revisions.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--BASED ON CONTENT OF PROPOSAL*

A technical evaluation must be based on information submitted with the proposal. No matter how

capable an offeror may be, if it does not submit an adequately written proposal, it will not be considered in the competitive range or in line for discussions in a negotiated procurement.

*B-212640 Feb. 7, 1984 84-1 CPD 152
CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--COMPETITION
IMPRACTICABLE TO OBTAIN--UNAVAILABILITY OF ADEQUATE
SPECIFICATIONS*

Fact that specifications given to prospective offerors were inadequate for responses from all but one firm that had direct knowledge of the agency's requirement, so that the result was a de facto sole-source procurement from that firm, does not invalidate the award where the awardee in fact was the only company that could meet the agency's need in the required timeframe.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Where protester orally conveys to the contracting officer its concern that the specifications do not adequately set forth the agency's requirements and its belief that the solicitation should be clarified, communication between the protester and the contracting officer suffices as an agency protest. Consequently, since protest to agency was timely filed and subsequent protest to GAO was filed within 10 working days of agency's confirmation of its requirements, matter is timely presented to GAO under Bid Protest Procedures.

*B-212660 Feb. 7, 1984 84-1 CPD 153
CONTRACTS--NEGOTIATION--COMPETITION--ADEQUACY*

Protest that delivery schedule unduly restricts competition because more firms could compete at a later date is denied since propriety of particular procurement is judged on whether government is obtaining reasonable prices through adequate competition and agency has received five proposals for equipment manufactured by four firms which indicates that adequate competition is available.

B-212660 Feb. 7, 1984 84-1 CPD 153 - Con.
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Allegation that specification requiring "disc drive" to be supplied with "cache" feature unduly restricts competition is denied since agency has primary responsibility for drafting specifications reflecting minimum needs of the government and GAO will not object in the absence of evidence of a lack of reasonable basis for the questioned specification.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
PERFORMANCE V. DESIGN SPECIFICATIONS

Allegation that specifications and evaluation criteria are excessively general and vague and prevent the submission of intelligent proposals is denied since specifications adequately detailed agency's requirements and evaluation factors stated with sufficient clarity basis upon which proposals would be evaluated. Mere presence of risk or uncertainty does not make solicitation improper.

EQUIPMENT--AUTOMATIC DATA PROCESSING SYSTEMS--BENCHMARKING--
POSTCLOSING--PROPRIETY

RFP provision allowing functional demonstration of tentatively selected equipment after receipt of best and final offers is not objectionable.

B-213314 Feb. 7, 1984 84-1 CPD 154
BIDS--MISTAKES--CORRECTION--AFTER BID OPENING--RULE

GAO will not disturb administrative determination to permit correction of mistake alleged after bid opening but before award unless the determination has no reasonable basis.

BIDS--MISTAKES--CORRECTION--EVIDENCE OF ERROR--SUFFICIENCY

Agency determination to permit correction in bid was proper where agency reasonably determined that bidder presented clear and convincing evidence of the mistake

and the intended bid and worksheets evidence that the mistake was the result of an obvious extension error.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--MISTAKES

GAO will consider protest against bid correction where competing bidder points out substantial magnitude of correction and requests GAO review without more specific allegation of impropriety.

*B-213580 Feb. 7, 1984 84-1 CPD 155
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED*

Protest against sole-source procurement is academic because agency indicates that solicitation will be canceled and requirement will be competitively acquired.

*B-214123 Feb. 7, 1984 84-1 CPD 156
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--POLICY
MATTERS--NOT FOR GAO REVIEW*

Determination under Office of Management and Budget Circular No. A-76 to contract out for services in lieu of performance by government employees is a matter of executive policy not reviewable in bid protest filed by union representing federal employees.

*B-214179 Feb. 7, 1984 84-1 CPD 157
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--OPTIONS--
NON-EXERCISE*

Where an option is exercisable at the discretion of the government, the decision not to exercise the option is a matter of contract administration which GAO will not review under its bid protest function.

*B-213010 Feb. 8, 1984 84-1 CPD 158
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--FAILURE TO
SOLICIT*

The failure of a firm to receive a copy of the solicitation does not prevent award and require resolicitation where there was a significant effort to

obtain competition, a reasonable price was obtained, and there was no deliberate attempt to exclude the protester from competition. This rule applies even though only one offer is received.

CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

Unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference or supposition. Where the written record not only fails to demonstrate bias or discrimination against the protester, but in fact suggests an alternative explanation for the agency actions in dispute, then the protester's allegations are properly to be regarded as mere speculation.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

As a general rule, a protester has the burden of affirmatively proving its case. GAO will not conduct an independent investigation to establish the validity of a protester's speculative statements, but will instead essentially rely upon the factual record developed by the parties.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where the protester fails to show that the alleged employment of a former employee of the procuring agency by the awardee and the alleged employment of a former employee of the awardee by the procuring agency in any way influenced the procurement, then protester has failed to carry its burden of affirmatively proving that the procurement was tainted by conflict of interest.

B-214070 Feb. 8, 1984 84-1 CPD 160

CONTRACTS--AWARDS--FOREIGN FIRM AWARDEE--PROPRIETY OF AWARD

Protest against proposed award of contract to foreign firm is dismissed since there is no federal law or regulation preventing foreign firms from competing on government contracts.

B-212873 Feb. 9, 1984 84-1 CPD 161
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

GAO concludes that initial basis for protest is abandoned and will not be considered. Contention that protester should have been granted waiver from prohibition against purchase of nondesignated or nonqualifying country end products under title III of Trade Agreements Act of 1979, 19 U.S.C. 2511, *et seq.*, is untimely because not filed within 10 working days of when protester should have known of basis for protest.

B-213258 Feb. 9, 1984 84-1 CPD 162
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
NONRESPONSIVE BIDS

Cancellation of an IFB is appropriate where all bids received have been properly rejected as nonresponsive.

BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT

A bid in a brand name or equal solicitation which fails to indicate conformance with a salient characteristic is nonresponsive and must be rejected, and cannot be amended by information furnished after bid opening in order to make it responsive.

B-211950.2 Feb. 10, 1984 84-1 CPD 164
OFFICE OF MANAGEMENT AND BUDGET--CIRCULARS--NO. A-76--POLICY
MATTERS--NOT FOR GAO REVIEW

GAO will not review a protest against an agency's converting a contracted commercial activity to an in-house commercial activity without following the procedures set forth in Office of Management and Budget Circular A-76 because, except under limited circumstances not present here, we regard compliance with the circular as a matter of executive branch policy.

*B-213026 Feb. 10, 1984 84-1 CPD 165
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL
PROTEST BASIS*

Protester's allegation that its proposal was improperly rejected as technically unacceptable, first raised several months after award, in comments on agency's report, is untimely and not for consideration since it raises new and independent ground for protest which does not independently satisfy timeliness criteria of GAO's Bid Protest Procedures.

*B-213876 Feb. 10, 1984 84-1 CPD 167
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
CONTRACT--TERMINATED FOR CONVENIENCE*

Where agency determines that protest has merit and takes appropriate remedial action, further development and consideration of protest by GAO would serve no useful purpose.

*B-214095.2 Feb. 10, 1984 84-1 CPD 168
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest against rejection of bid filed with GAO more than 10 working days after protester learns of rejection of bid and basis for rejection is dismissed as untimely.

*B-214173 Feb. 10, 1984 84-1 CPD 171
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Grant complaint challenging the capability of awardee to provide certain materials and services at a particular price relates to a matter of responsibility which will not be reviewed absent a showing that the contracting agency acted fraudulently or in bad faith.

*B-214222 Feb. 10, 1984 84-1 CPD 173
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTESTS--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest filed with GAO within 10 working days of agency's denial of protest is untimely because it pertains to alleged defect in invitation for bids and was not filed with agency until after bid opening.

*B-214239 Feb. 10, 1984 84-1 CPD 174
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest of an allegedly restrictive solicitation provision is untimely, and will not be considered on the merits, where not filed in GAO until after the closing date.

*B-210223.4, B-210223.5 Feb. 13, 1984 84-1 CPD 176
BIDS--ACCEPTANCE--NOT PREJUDICIAL TO OTHER BIDDERS*

Where the low bidder offers a lesser monthly price for the first program year than for subsequent years in a multiyear procurement, despite a requirement that the unit price be the same for all years, but the low bid would be low even if contract were to be terminated after the first operational month, and no prejudice would result to other bidders from acceptance of the low bid since difference between low bid and second low bid indicates low bid would have been low even if the second low bidder had been permitted to bid in the same manner, the low bid may be accepted.

BIDS--UNBALANCED--RESPONSIVENESS OF BID

Since an unbalanced bid is unacceptable only if it is both mathematically unbalanced, i.e., bid items do not carry their fair share of the cost of the work plus profit, and materially unbalanced, i.e., there is a reasonable doubt that award to the bidder will not result in the lowest ultimate cost to the government, then a

low bid significantly lower than all other bids and resulting in the lowest ultimate cost to the government even if the procurement is terminated after the first operational month is not unacceptable.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest that a solicitation is defective because its provisions are subject to inconsistent interpretations is untimely where it is not filed until after bid opening, since our Bid Protest Procedures, 4 C.F.R. 21.2(b)(1) require that protests based on solicitation improprieties apparent prior to bid opening must be filed prior to bid opening to be timely.

*B-211857, B-211857.2 Feb. 13, 1984 84-1 CPD 177
CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD*

Allegation that contracting agency awarded contract after receiving notice of protest does not affect the validity of award.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--FAILURE TO DISCUSS--SITUATIONS NOT REQUIRING DISCUSSION

Procuring agency's determination not to point out deficiencies in protester's cost proposal was not prejudicial to protester.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--CRITERIA--UNSTATED

Omission of FPR Temp. Reg. 45," concerning compensation levels for professional employees in RFP's, did not prejudice protester, because application of regulation in evaluation of proposals was consistent with regulation, and offerors were otherwise on notice that their proposed compensation levels would be assessed for cost realism.

*B-211857, B-211857.2 Feb. 13, 1984 84-1 CPD 177 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL SUPERIORITY V. COST*

Allegations that DOL improperly evaluated cost of protester's proposals in two separate procurements for similar services are without merit. In first procurement, agency's decision to award to high cost, technically superior proposal, instead of protester's low cost proposal was consistent with evaluation criteria and rationally based. In second procurement, award to low cost proposal was proper where proposals were rated substantially equal in technical merit.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Allegations that agency should have procured the required services by formal advertising rather than by negotiation and that RFP's should have included the Service Contract Act provisions are untimely since alleged defects were apparent on the face of the RFP's and were not protested before the closing date as required by GAO Bid Protest Procedures. We do not consider issues significant enough to warrant their consideration.

CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS

GAO need not consider allegation that contracting officers lacked proper contracting authority since procuring agency may cure alleged defect. Validity of contract, therefore, is not affected.

*B-212378.7 Feb. 13, 1984 84-1 CPD 178
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE*

GAO will not disturb agency's evaluation of technical proposal absent showing that evaluation was arbitrary or in violation of procurement laws or regulations. Record does not show that agency evaluation of protester's proposal was arbitrary.

*B-212378.7 Feb. 13, 1984 84-1 CPD 178 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest concerning alleged deficiencies in solicitation specifications is untimely and not for consideration since protest initially raising these issues was not filed with our Office until well after closing date for receipt of technical proposals.

*B-212847 Feb. 13, 1984 84-1 CPD 179
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

Protester's private agreement not to compete for specified item, which places it at a competitive disadvantage, does not cause a specification which otherwise represents the legitimate needs of the procuring agency to be unduly restrictive of competition.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
BURDEN OF PROVING UNDUE RESTRICTION*

The protester has not met its burden of showing that the agency's specification was in excess of minimum needs or unduly restricted competition where the agency shows that only the specified design has been field tested and has features that maximize its effectiveness, even though the protester contends that its alternate design is equally effective and has been procured by the agency previously, albeit for reasons of urgency.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--ADMINISTRATIVE
DETERMINATION*

GAO will not question agency determination not to field test protester's proposed alternate to the specified design where testing is both extensive and expensive and where the protester's inability to compete is the result of its private agreement not to compete, rather than any restriction in the specification.

*B-213032 Feb. 13, 1984 84-1 CPD 180
CONTRACTS--REQUESTS FOR QUOTATIONS--SPECIFICATIONS--
RESTRICTIVE--"APPROVED SOURCE" REQUIREMENT*

Agency properly restricted procurement of spare air compressor parts to original equipment manufacturer's parts where agency neither possessed nor had rights to the original equipment manufacturer's technical data necessary for competitive procurement and only the original equipment manufacturer's parts had been tested for reliability.

*B-213327.2 Feb. 13, 1984 84-1 CPD 181
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Request for reconsideration which contains information previously considered is denied.

*B-213347 Feb. 13, 1984 84-1 CPD 182
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY EQUAL PROPOSALS--PRICE DETERMINATIVE FACTOR*

Where competing technical proposals are essentially equal, cost may become the determinative factor even though cost was ranked as the least important evaluation factor in the solicitation.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--POINT RATING--
REQUIREMENT NOT MANDATORY*

While technical point ratings are useful as guides for intelligent decisionmaking in the procurement process, selection officials are not bound by the scores and whether one proposal is superior to another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the selection official.

B-213347 Feb. 13, 1984 84-1 CPD 182
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against the applicability of the Trade Agreement Act of 1979 to the procurement, where an amendment to the solicitation stated that the Trade Agreement Act was applicable to the procurement, is untimely and not for consideration, since the issue was not raised prior to the submission of initial proposals. Each individual basis of protest must independently satisfy the timeliness standards established in GAO's Bid Protest Procedures.

B-213619 Feb. 13, 1984 84-1 CPD 183
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
NONRESPONSIBILITY FINDING

GAO will not disturb contracting agency's determination that protester was nonresponsible where protester could not perform at levels required by IFB immediately upon award of contract. Protester admitted to preaward survey team that it needed to obtain some equipment and make some personnel changes in order to perform at IFB-specified levels and to complete work within time schedules set forth in IFB. Moreover, protester was about to move from one facility to another shortly after preaward survey was conducted and agency had work backlog which might cause work orders to be placed immediately after award. In these circumstances, agency determination was reasonable.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest that short period between bid opening and scheduled commencement of performance of contract was an unnecessary restriction on competition is dismissed. IFB set forth both the bid opening date and the performance schedule and, therefore, this issue should have been apparent to protester from a reading of the IFB.

Since this issue was not protested until after bid opening, it is untimely under section 21.2(b)(1) of GAO Bid Protest Procedures which requires protests based on alleged improprieties which are apparent prior to bid opening to be filed prior to bid opening in order to be considered. 4 C.F.R. 21.2(b)(1) (1983).

*B-214000 Feb. 13, 1984 84-1 CPD 184
CONTRACTS--SUBCONTRACTS--MINORITY SUBCONTRACTING*

Prime operating contractor properly did not give a preference to minority business for a guard services subcontract where the solicitation did not set aside the acquisition for such businesses.

*B-214162 Feb. 13, 1984 84-1 CPD 185
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF PROPOSALS*

Protest based on agency's failure to send protester a copy of the solicitation, which was publicized in the Commerce Business Daily, is untimely since it is filed more than 10 days after the initial closing date for receipt of proposals.

*B-210806 Feb. 14, 1984 84-1 CPD 186
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review contracting officers' affirmative determinations of responsibility except in limited circumstances not shown to be present in this case.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

The determination of the relative merits of offerors' technical proposals is primarily the responsibility of the procuring agency and will be questioned by GAO only upon a clear showing of unreasonableness, abuse of discretion or violations of procurement statutes or regulations. Protest is denied where record evi-

dences a reasonable basis for procuring agency's conclusion that awardee, whose firm fixed price was approximately 10 percent below the protester's also submitted the technically superior proposal.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Contention that solicitation specifications are improper in that they contain design features patented by protester's supplier is untimely because protest was not filed until after the closing date for receipt of initial proposals.

B-211240.2 Feb. 14, 1984 84-1 CPD 187

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL SUBCONTRACTORS--RESTRICTIVE PROCUREMENT ALLEGATION

Requirement for new operating system, available from only one vendor, is not unduly restrictive where nothing in solicitation precluded third party from offering that vendor's computer with peripherals from other manufacturers. Protester, supplier of mass storage peripheral devices, was affected by requirement for new operating system only because manufacturers of compatible computers were affected; consequently, these manufacturers stand between protester and challenged requirement as parties of greater interest, foreclosing protester's status as an interested party. Decision is affirmed.

B-211936 Feb. 14, 1984 84-1 CPD 188

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--TECHNICAL SUPERIORITY V. COST

In a negotiated procurement, an agency may make cost versus technical tradeoffs, subject to the tests of rationality and consistency with the established evaluation factors. Where a solicitation states that "Price Advantage" is worth no more than 10 of 100 evaluation points, the agency reasonably may determine that the advantages of a proposal rated 20 percent higher technically than another outweigh the other's 8.9 percent cost advantage.

*B-211936 Feb. 14, 1984 84-1 CPD 188 - Cpn.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

A protester's complaints concerning the conduct of negotiations are untimely when first raised 6 months later.

*FREEDOM OF INFORMATION ACT--DISCLOSURE REQUESTS--RECORDS
OF AGENCIES, ETC., OTHER THAN GAO--AUTHORITY OF GAO TO REQUIRE
DISCLOSURE*

GAO has no authority under the Freedom of Information Act to determine when or what information must be disclosed by government agencies.

*B-212162.2 Feb. 14, 1984 84-1 CPD 189
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ADDITIONAL EVIDENCE SUBMITTED--
AVAILABLE BUT NOT PREVIOUSLY PROVIDED TO GAO*

Original decision is affirmed where request for reconsideration presents information which was known to protester and could have been presented in connection with its initial protest or arguments which were previously considered and rejected.

*B-212453 Feb. 14, 1984 84-1 CPD 190
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

A protester's continued pursuit of its protest with the contracting agency, despite the initial rejection of its protest, does not extend the time or obviate the necessity of filing a protest with GAO within 10 working days of the initial adverse agency action.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Under our Bid Protest Procedures, a protest must be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier. An FOIA request does not toll that requirement.

*B-212689.3, B-212689.4 Feb. 14, 1984 84-1 CPD 191
BIDS--INVITATION FOR BIDS--CANCELLATION--RESOLICITATION--USE
OF PROPER COST EVALUATION CRITERIA*

Where wage determination increasing wage rate was received at least 10 days prior to bid opening, but was not included in solicitation by amendment, contracting officer's cancellation and readvertisement of requirement were proper. To have made award to low bidder and then modified contract to include wage determination would have been tantamount to awarding a contract different from the one advertised.

*B-212719 Feb. 14, 1984 84-1 CPD 192
ANTITRUST MATTERS--JURISDICTION--DEPARTMENT OF JUSTICE*

Where the protester does not allege that there was inadequate competition and unreasonable prices, an allegation that the award created a virtual monopoly in the awardee provides no basis for questioning the propriety of the award. To the extent that protester alleges antitrust violations, these are matters for the Attorney General, and GAO will not consider them under its bid protest functions.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--ADMINISTRATIVE DETERMINATION*

The record indicates that the procuring agency: (1) properly evaluated the protester's technical proposal in accordance with the evaluation criteria set forth in the request for proposals; (2) discussed a particular contract line item proposal with the protester; (3) eliminated the protester on another contract line item at issue due to cost considerations; and (4) properly evaluated the awardee's technical support capabilities.

The Department of the Treasury had an interest in the subject matter of the solicitation and may have recommended the protester for award. Nevertheless, the procuring agency was not required to follow this recommendation since we are not aware of any requirement that the Army permit the Treasury to evaluate proposals.

B-212719 Feb. 14, 1984 84-1 CPD 192 - Con.
CONTRACTS--PROTESTS--ALLEGATIONS--BIAS--UNSUBSTANTIATED

On conflict of interest questions concerning employees and ex-employees of contracting agencies, GAO's bid protest review function is to determine whether the employee involved may have exerted prejudice for, or bias on behalf of, the company which was awarded the contract without regard to whether the employee may have also engaged in conduct constituting a conflict of interest. Based on an analysis of the evidence of record, award may not be questioned under this review standard.

CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED

The protester alleges that the awardee is improperly engaging in self-insurance, but the protester has not shown that the awardee did not comply with Defense Acquisition Regulation 10-303(b) (Defense Acquisition Circular No. 76-42, February 28, 1983) concerning self-insurance.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Protester has not met its burden of affirmatively proving its case where the protester and the agency submit conflicting statements as to whether the awardee's initial proposal was timely.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against an alleged impropriety in the RFP is untimely when it is not filed until after the closing date for the receipt of initial proposals. Each individual basis of protest must independently satisfy the timeliness standards established in GAO's Bid Protest Procedures.

B-212858.2 Feb. 14, 1984 84-1 CPD 193
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--ERROR OF FACT OR LAW--NOT ESTABLISHED

Where request for reconsideration fails to demonstrate any erroneous fact or law, prior decision is affirmed.

B-213148 Feb. 14, 1984 84-1 CPD 195
BONDS--BID--DISCREPANCY BETWEEN BID AND BID BOND--BID BOND

Agency properly rejected a bid bond that designated one firm as the intended corporate surety but was submitted with a power of attorney from a different corporate surety where the surety designated on the bond was not on the Treasury Department's list of acceptable sureties, and there was insufficient evidence on the face of the bond and accompanying documents to conclude with certainty that the other surety would be bound.

B-213409 Feb. 14, 1984 84-1 CPD 196
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--JUSTIFICATION--INACCURATE SPECIFICATIONS

Cancellation of IFB was proper where solicitation required only a total bid price at bid opening and post-bid-opening submission of and possible negotiation of unit prices for indefinite quantity portion of contract, since unit prices are necessary at bid opening to set the material terms of contractor's obligation.

B-213519, B-213519.2 Feb. 14, 1984 84-1 CPD 197
BIDDERS--QUALIFICATIONS--EXPERIENCE--RESPONSIBILITY V. BID RESPONSIVENESS

Where resumes are to be used to determine whether the bidder and its employees satisfy specified experience requirements, a bidder may submit the resumes after bid opening, even though the solicitation required their submission with the bid, since satisfaction of bidder experience requirements involves bidder responsibility, not bid responsiveness.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--DEFINITIVE RESPONSIBILITY CRITERIA

Where the protester does not specify why it believes that the solicitation's definitive responsibility criteria have not been met, and the agency's affirmative responsibility determination is reasonably supported by the record, GAO has no basis for questioning that determination.

B-213683 Feb. 14, 1984 84-1 CPD 198
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Where protest is filed initially with procuring activity, subsequent protest to GAO, not filed within 10 days of the protester's notice of initial adverse agency action (refusal to consider protest and proceeding with procurement), is untimely even where protester continued to pursue protest with contracting agency after receipt of initial adverse agency action.

B-214013 Feb. 14, 1984 84-1 CPD 199
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--SUSPENDED,
DEBARRED, ETC. CONTRACTORS

GAO will not consider protest that government's careless testing of tool samples submitted with bid led to erroneous rejection of bid as not responsive, because protester is ineligible for award even if protest were sustained, firm having been suspended from contracting with procuring agency pending debarment proceedings.

B-214159 Feb. 14, 1984 84-1 CPD 200
BIDS--INVITATION FURNISHING REQUIREMENT--EFFECT OF FAILURE
TO RECEIVE

Protest that procuring agency failed to furnish solicitation to protester is summarily denied where the protester has not shown that competition and reasonable prices were not obtained and the failure to furnish the solicitation was not shown to be the result of any deliberate or conscious effort to exclude the protester from competition.

B-214187 Feb. 14, 1984 84-1 CPD 201
BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT
ACCEPTANCE PERIODS--SHORTER PERIODS--REJECTION OF BID

A bid offering a 15-day bid acceptance period rather than the 30-day minimum period required by the solicitation was properly rejected as nonresponsive.

B-210406.3 Feb. 15, 1984 84-1 CPD 203
STATUTORY CONSTRUCTION--CONSTITUTIONALITY--GENERAL ACCOUNTING
OFFICE JURISDICTION

Protester argues that District of Columbia law on which prior decision dismissing protest is based is unconstitutional, and, therefore, prior decision should be reversed. We affirm prior decision because it is function of courts, not GAO, to declare statutes unconstitutional, and courts have not done so.

B-211128 Feb. 15, 1984 84-1 CPD 204
BIDS--LATE--MISPLACED--MISHANDLING BY GOVERNMENT

Agency's rejection of a bid which, due to the bidder's use of an envelope stamped with an incorrect bid opening date was discovered 15 days after bid opening, was improper since: (1) the bid was received in the designated bid opening room prior to bid opening; (2) the bid was in the agency's possession and control until discovered; and (3) the bid was discovered prior to award.

B-212867, et al. Feb. 15, 1984 84-1 CPD 205
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
FACTORS NOT IN SOLICITATION--ORAL DISCLOSURE DURING
NEGOTIATIONS

A protest against an agency's application of requirements not contained in a solicitation is denied where the protester was orally informed of the requirements and given an opportunity to respond, but could not comply with them.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

A protest is untimely where it was not filed with GAO or the contracting agency within 10 working days after the protester learned of its basis of protest. Neither the good cause nor the significant issue exceptions to the timeliness requirement are applicable.

*B-212867, et al. Feb. 15, 1984 84-1 CPD 205 - Con.
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROSPECTIVE
SUBCONTRACTORS--JOINED IN PROTEST BY COMPETITOR FOR PRIME
CONTRACT*

Even though a supplier to a disappointed offeror generally would not be an interested party to protest, its contentions will be considered where the offeror has protested to GAO on the same basis.

*B-213272 Feb. 15, 1984 84-1 CPD 206
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
DEFECTIVE SOLICITATION*

Cancellation of IFB after bid opening was proper where specifications were inadequate and compelling reason exists to revise specifications to reflect government's minimum needs.

*B-213599.2 Feb. 15, 1984 84-1 CPD 207
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PREPARATION--
COST--DENIED*

Where the protester fails to show that but for the cancellation of the procurement it had a substantial chance for award, claim for proposal preparation costs is denied.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--TIMELINESS*

Where the protester vacated its previous business address, had no regular business address, picked up mail at its previous business address, and alleges that it filed its original protest and claim for proposal preparation costs and request for reconsideration within 10 working days of receiving knowledge of initial adverse agency action and our prior decision, respectively, which were both mailed to the protester's previous business address, the protest and claim and the request for reconsideration are timely.

B-213599.2 Feb. 15, 1984 84-1 CPD 207 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER--DOUBTFUL

Where doubt exists concerning the date the protester became aware of the basis of protest, GAO resolves doubt in favor of the protester.

B-213916 Feb. 15, 1984 84-1 CPD 208
BIDS--MISTAKES--CORRECTION--DENIED

GAO will not consider a postaward mistake in bid claim submitted by a bidder on a solicitation issued pursuant to a federal grant.

B-214218 Feb. 15, 1984 84-1 CPD 209
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Contention that awardee cannot timely provide required programmed instructional material at the stated item price challenges the agency's determination that the awardee is responsible, a matter that GAO will not review absent a showing of possible fraud or bad faith on the part of government procurement officials or of misapplication of definitive responsibility criteria.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest alleging that the agency treated the protester unfairly in evaluating its proposal is untimely since the protest was filed more than 10 days after the date the protester knew or should have known the basis of its protest.

FREEDOM OF INFORMATION ACT--GENERAL ACCOUNTING OFFICE
AUTHORITY

GAO has no authority under the Freedom of Information Act regarding an agency's release of documents.

*B-211161.2 Feb. 22, 1984 84-1 CPD 210
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY*

Protester's allegation that procuring officials misinformed protester that protester's proposal may have been low is irrelevant since protester's proposal was properly determined technically unacceptable and a technically unacceptable proposal cannot be considered for award.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protester's allegations that proposals could not be properly evaluated without engineer-approved drawings which solicitation did not require and that solicitation should have contained a geographic restriction on eligible offerors are untimely under GAO Bid Protest Procedures which require protests alleging improprieties apparent on the face of the solicitation be filed prior to the closing date for receipt for proposals.

*B-211228.2 Feb. 22, 1984 84-1 CPD 211
CONTRACTS--PROTESTS--PREPARATION--COSTS--NONCOMPENSABLE*

Even though procuring agency improperly rejected protester's bid, prior decision disallowed successful protester's claim for bid preparation costs on the ground that low bid was ineligible for award due to a price in excess of available funding. Denial of claim is affirmed on reconsideration. Protester's allegation that supplemental funding might have been found to fund award had agency properly found bid to be responsive must be considered to be speculation.

Expenses incurred in pursuing a protest are noncompensable.

*B-212263.3 Feb. 22, 1984 84-1 CPD 212
BIDS--PRICES--BELOW COST--EFFECT ON BIDDER RESPONSIBILITY*

No basis exists to preclude a contract award merely because the low bidder submitted a below-cost bid.

A below-cost bid presents a question of the bidder's responsibility and GAO does not review affirmative determinations of responsibility except in limited circumstances.

CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO

Allegation that awardee's bid was nonresponsive is dismissed where protester contends awardee's postponing submission of bid preparation papers does not show compliance with minimum manhours because such matter involves bidder responsibility.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

An allegation that a firm will not be able to comply with IFB requirements will not be considered since it involves a matter of contract administration which is the function and responsibility of the contracting agency.

B-212349 Feb. 22, 1984 84-1 CPD 213

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SUBMISSION DATE--ADMINISTRATIVE DETERMINATION

Agency's use of a 20-day proposal preparation period did not prejudice the protester who could not meet that time-frame, and who complains that formal advertising should have been used instead of negotiation, and that under formal advertising 30 days should have been allowed, since a 20-day period in fact was proper even if the requirement had been advertised.

B-212349 Feb. 22, 1984 84-1 CPD 213

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--NOT APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against impropriety in an RFP that the protester received after the closing date for receipt of proposals is timely where the CBD announcement, which generally constitutes constructive notice of a solicitation's contents, did not include the closing

date, the protester diligently requested a copy of the solicitation, and the protest was filed within 10 working days after receipt of the RFP.

*B-212537 Feb. 22, 1984 84-1 CPD 214
ADVERTISING--ADVERTISING V. NEGOTIATION--QUALIFIED PRODUCTS
LIST PROCUREMENT*

The use of formal advertising procedures is not appropriate where only one firm is listed on a QPL since in the absence of competition the Navy would require data only available in negotiated procedures upon which to evaluate the reasonableness of the prices offered.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where the only evidence supporting an allegation that the awardee altered its bid prices after opening is effectively refuted by the agency's explanation, the protester has failed to meet its burden of proving that the alleged alteration in fact occurred.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR
APPLICATION*

GAO will not invoke its "significant issues" exception to its filing requirements where the untimely protest does not raise issues of first impression which would have widespread significance to the procurement community.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

GAO's Bid Protest Procedures require that protests alleging improprieties in an invitation for bids be filed with either the contracting agency or GAO prior to bid opening.

CONTRACTS--PROTESTS--WHAT CONSTITUTES PROTEST

While the word "protest" need not be used in a communication, there must be an expression of dissatis-

faction in the communication and a request for corrective action if the communication is to be considered an agency protest.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--WITHDRAWAL--SET-ASIDE IMPROPER

Total small business set-aside is properly withdrawn without referral to Small Business Administration representative where solicitation is amended to require item on Qualified Products List (QPL) since total set-aside is not generally authorized for use when the product of a large business is on the QPL.

*B-212665, B-212665.2 Feb. 22, 1984 84-1 CPD 215
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING*

The cancellation of an invitation for bids after bid opening is justified where the procuring agency no longer requires the item sought due to the availability of a substitute item that will meet the agency's needs at a lower cost.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where the only available evidence on a matter is the conflicting statements of the protester and the procuring agency, the protester has not met its burden of affirmatively proving its case.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER NOT IN LINE FOR AWARD--INTERESTED PARTY NONETHELESS

Third low bidder is an interested party under GAO Bid Protest Procedures to protest the cancellation of an invitation for bids where the low bidder complains as well, and the third low bidder also alleges that the lower bidders are nonresponsive.

*B-212938 Feb. 22, 1984 84-1 CPD 216
BONDS--BID--DISCREPANCY BETWEEN BID AND BID BOND--BID NONRESPONSIVE*

Where discrepancy exists between legal entity shown on the bid and legal entity shown on the bid bond

and it is not possible to conclude from the bid itself that the intended bidder was the same legal entity as the named principal on the bid bond, bid was properly rejected as nonresponsive since bid as submitted is, at best, ambiguous.

*B-212982 Feb. 22, 1984 84-1 CPD 217
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--RESTRICTIVE--
BURDEN OF PROVING UNDUE RESTRICTION*

A solicitation requirement that the bidder must offer a planer bed-type machine, as opposed to a retractable saddle-type machine, to produce M-178 Gun Mount cradles is not unduly restrictive of competition where the agency claims that only the planer bed-type machine can hold required tolerances on a consistent production basis and the protester fails to show otherwise.

Where the protester merely alleges that only the awardee can meet the specifications of the solicitation, the protester has not shown that the agency unreasonably determined its actual minimum needs and that the specifications are thus unduly restrictive of competition.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADDITIONAL INFORMATION SUPPORTING
TIMELY SUBMISSION*

Additional materials submitted in support of a timely protest will be considered as part of the protest. The additional materials only pertain to the protest basis clearly stated in the initial protest.

*B-213002 Feb. 22, 1984 84-1 CPD 218
CONTRACTS--LABOR STIPULATIONS--SERVICE CONTRACT ACT OF 1965--
APPLICABILITY OF ACT--ADMINISTRATIVE DETERMINATION
REASONABLENESS*

Determination of whether a proposed contract is subject to the Service Contract Act is for the procuring activity and will not be questioned by our Office unless it is shown to be unreasonable.

*B-213002 Feb. 22, 1984 84-1 CPD 218 - Con.
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
INAPPLICABILITY OF NORMAL COMPETITIVE PROCUREMENT PRACTICES*

Protest alleging the agency has not complied with applicable Federal Procurement Regulations (FPR) is denied since competitive and procedural requirements of FPR do not apply to contract under the 8(a) program of the Small Business Act and review of solicitation indicates that evaluation criteria and relative importance of price were clearly defined.

*B-213078 Feb. 22, 1984 84-1 CPD 219
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

Protester has not shown that agency determination to reject its proposal as technically unacceptable is unreasonable where protester only shows that it disagrees with some of the agency's reasons for rejecting the proposal and that its proposal in fact did not indicate that its equipment would meet two specification requirements.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY UNACCEPTABLE PROPOSALS--COST, ETC. NOT A FACTOR*

Protester's lower cost is not basis to consider its technically unacceptable proposal since once proposal is properly rejected as technically unacceptable, it is irrelevant whether it might provide lower cost.

*B-213090 Feb. 22, 1984 84-1 CPD 220
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
MANUFACTURER, AUTHORIZED DEALER, ETC. REPRESENTATIONS*

Requirement in solicitation that bidder certify that the manufacturer of the equipment offered has been engaged in the production of the type of equipment specified for at least 2 years does not relate to specific model offered but only to type of equipment (motor grader).

*B-213343 Feb. 22, 1984 84-1 CPD 221
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL
CONTRACTORS, ETC. NOT SUBMITTING BIDS, ETC.*

A protester who did not submit a quotation under the RFQ, even though it could have done so, would not be eligible for award even if certain issues raised were resolved in its favor. Thus, the protester is not an interested party, as concerns those particular issues, under our Bid Protest Procedures.

*CONTRACTS--REQUESTS FOR QUOTATIONS--PREPARATION OF QUOTATION--
CONTRACTOR'S RESPONSIBILITY*

Where amendment to request for quotations (RFQ) was received 1 full week prior to date for receipt of quotations, prospective quoter had sufficient time to obtain clarification concerning RFQ and to prepare quotation since it (1) had received RFQ almost 2 weeks earlier and had reviewed its provisions and (2) contracting personnel could have been easily contacted and/or a site inspection made.

*B-213406 Feb. 22, 1984 84-1 CPD 222
BIDS--MISTAKES--CORRECTION--AFTER BID OPENING--RULE*

Where the contracting agency is authorized to correct a mistake in bid after bid opening, GAO review is restricted to determining whether the contracting agency had a reasonable basis for the determination to correct. Based on our review, we cannot question the agency's decision to allow correction for a \$100,000 bid error where the bidder's worksheets support the correction.

*B-214192 Feb. 22, 1984 84-1 CPD 223
BIDS--PREPARATION--COST--NONCOMPENSABLE*

Claim for bid preparation costs is denied where there is no showing of government impropriety with respect to claimant's bid.

B-214192 Feb. 22, 1984 84-1 CPD 223 - Con.
CONTRACTS--AWARDS--NONRESPONSIVE BIDDERS--ALL BIDDERS
NONRESPONSIVE

Agency may properly award contract to low, nonresponsive bidder where (1) all bids received are nonresponsive for the same reason and (2) notwithstanding its nonresponsiveness the low bid will meet the government's actual needs, since acceptance of the bid in such circumstances will not prejudice other bidders.

B-214217 Feb. 22, 1984 84-1 CPD 224
BIDS--INVITATION FOR BIDS--AMENDMENTS--NONRECEIPT--BIDDER'S
RISK--BIDDER EXCLUSION NOT INTENDED

Protest that the procuring activity sent the protester the wrong amendment to a solicitation and that the protester failed as a result to submit a timely bid is denied where it does not appear that there was a deliberate effort by the contracting officials to exclude the protester from competition.

B-214224 Feb. 22, 1984 84-1 CPD 225
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

GAO will not undertake an independent review of a contracting officer's nonresponsibility determination of a small business concern because the Small Business Administration (SBA) has statutory authority to determine conclusively a small business concern's responsibility.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--CERTIFICATE OF COMPETENCY--
CONCLUSIVENESS

GAO will not review the SBA's decision not to issue a certificate of competency where the protester fails to make a prima facie showing of fraud or willful disregard of the facts.

B-214232 Feb. 22, 1984 84-1 CPD 226
BIDS--LATE--REGISTERED MAIL--"FIVE-DAY RULE"

Rejection of a late proposal, although mailed at least 5 days before the due date for submission of initial proposals, was proper since the proposal was not sent by registered or certified mail.

B-214279 Feb. 22, 1984 84-1 CPD 227
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest not filed until more than 3 years after protester learns the basis of its protest is dismissed as untimely.

B-214309 Feb. 22, 1984 84-1 CPD 228
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest which in essence is based on alleged restrictive specification that was apparent on the face of the invitation for bids is untimely when not filed prior to bid opening.

B-214327 Feb. 22, 1984 84-1 CPD 229
BIDDERS--QUALIFICATIONS--MANUFACTURER ORDERS--ADMINISTRATIVE
DETERMINATION--LABOR DEPARTMENT REVIEW

A protest filed before best and final offers are due, which anticipates that an agency will not comply with the regulations concerning challenges to a successful offeror's status under the Walsh-Healey Act, will not be considered.

B-210427, et al. Feb. 23, 1984 84-1 CPD 230
CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
CONTRACTOR'S RESPONSIBILITY FOR DELIVERY

Protester bears the responsibility for the delivery of quotations. Protest is denied because

protester has not affirmatively proven that it submitted quotations the procuring agency claims it did not receive.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging that various solicitations for spare parts were defective because they required nonmanufacturers offering to supply parts made by the approved manufacturers listed in the solicitation to submit documentation showing that they were either authorized dealers for the listed manufacturer's parts or that they intended to obtain the parts from the manufacturer listed in the solicitation or an authorized dealer is untimely where the alleged defect was apparent from the face of the solicitation, but the protest was not filed until after the closing dates for receipts of quotations.

*B-212218, B-212219 Feb. 23, 1984 84-1 CPD 231
CONTRACTS--MESS ATTENDANT SERVICES--PROCUREMENT--FORMAT*

Protester has failed to show that use of the test bid format for mess attendant services which requires bidders to use specified hours and labor rates and provides for an award fee based on performance is unreasonable where protester merely disagrees with agency's position that bonding requirements contained in the solicitation were inadequate to insure satisfactory contractor performance.

*DEFENSE ACQUISITION REGULATION--DEVIATIONS--REQUIREMENTS FOR
ISSUANCE--COMPLIANCE*

Protests contending that agency improperly used the one-time deviation authority contained in the Defense Acquisition Regulation are denied where the record shows that the contracting activities complied with the regulatory requirements for issuance of the deviations.

B-213018 Feb. 23, 1984 84-1 CPD 232

*CONTRACTS--FEDERAL SUPPLY SCHEDULE--PURCHASES ELSEWHERE--
AWARD COMBINING FSS AND NON-FSS ITEMS--COMPETITIVE ADVANTAGE--
NOT RESULT OF UNFAIR GOVERNMENT ACTION*

Agency may award combined contract for FSS and non-FSS items to offeror who submitted low aggregate quote in response to request for quotations.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Whether, by reducing its prices without notice to GSA, FSS contractor violated its contract with GSA is a matter of contract administration which GAO will not consider under its bid protest procedures.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF QUOTATIONS*

Allegation that specifications are inadequate and restrictive of competition is dismissed as untimely when not filed before the closing date for receipt of quotations.

*PURCHASES--PURCHASE ORDERS--FEDERAL SUPPLY SCHEDULE--PRICES--
REDUCTION*

Agency may award purchase order to federal supply schedule (FSS) contractor who reduces its contract price without giving notice to General Services Administration (GSA).

B-213382 Feb. 23, 1984 84-1 CPD 233

CONTRACTS--AWARDS--PROCEDURAL DEFECTS

Failure to provide prompt notice of award or to schedule a debriefing are procedural deficiencies which do not affect the validity of an award.

*B-213382 Feb. 23, 1984 84-1 CPD 233 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--
ADDITIONAL ROUNDS--DENIAL PROPRIETY*

While agency failed to follow solicitation provision which provided that if clarification of offers was needed then best and final offers would be solicited by conducting clarification conversations with both offerors but not asking for best and final offers, protester was not prejudiced as both offerors were treated alike in that neither was permitted to modify its proposal.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION
WITH ALL OFFERORS REQUIREMENT--WHAT CONSTITUTES DISCUSSION*

Questions asked of offerors did not constitute discussions and award on an initial proposal basis was proper where offerors were not allowed an opportunity to revise their proposals and the information requested and provided was not essential for determining the acceptability of proposals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICALLY EQUAL PROPOSALS--PRICE DETERMINATIVE FACTOR*

Under evaluation scheme which states that technical factors are weighted 65 percent and price 35 percent where proposals receive close scores under the technical evaluation, price may be determinative in award notwithstanding that price was less important in overall evaluation scheme.

*B-214221 Feb. 24, 1984 84-1 CPD 234
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Matters of contract administration are not within the purview of GAO Bid Protest Procedures.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative determination of responsibility except in limited circumstances not applicable here.

B-211634 Feb. 27, 1984 84-1 CPD 235
BIDS--INVITATION FOR BIDS--INTERPRETATION--ORAL EXPLANATION

Protest alleging that an oral statement made by an agency official during a pre-bid tour misled bidders concerning the total square footage of the surfaces to be painted is denied since effective competition was achieved and since the solicitation contained scale drawings of the areas to be painted and cautioned bidders to verify conditions and not to rely on oral statements by government representatives that vary from the drawings.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Allegation that drawings accompanying a solicitation for painting services were defective because they did not allow bidders to calculate accurately the total area of the surfaces to be painted is untimely because the allegation involves an impropriety apparent in the solicitation and should have been raised prior to bid opening.

B-212987, et al. Feb. 27, 1984 84-1 CPD 236
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--MINIMUM NEEDS--NOT OVERSTATED

Solicitation requirement in procurement for energy monitoring and control system (EMCS) that offeror have comparable system in operation at time of proposal submission is not unduly restrictive of competition where agency, because of experience of performance failures, seeks to ensure that the contractor is capable of delivering a workable EMCS in a timely fashion. Fact that only few offerors can meet the government's needs does not warrant conclusion that provision is unduly restrictive.

B-213014.2 Feb. 27, 1984 84-1 CPD 237
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--INDEPENDENT INVESTIGATION AND CONCLUSIONS--SPECULATIVE ALLEGATIONS

GAO does not conduct investigations to establish the validity of unfounded allegations as part of its bid protest function.

*B-213014.2 Feb. 27, 1984 84-1 CPD 237 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT
ESTABLISHED*

Where protester merely reiterates the arguments made in its original protest and merely disagrees with prior decision without specifying any errors of law or fact, GAO will not further consider the matter.

*B-213109 Feb. 27, 1984 84-1 CPD 238
CONTRACTS--DAMAGES--LIQUIDATED--ACTUAL DAMAGES V. PENALTY*

A performance requirements summary in a request for proposals (RFP) for services which permits the government to deduct amounts for unsatisfactory services does not impose a penalty and is capable of being objectively enforced where: (1) the protester has failed to show standardized testing is invalid to measure contractor performance, (2) the RFP is not ambiguous as to when the government may deduct if students do not achieve a particular grade level upon completion of a course, and (3) the government drafted specific performance standards to measure contractor performance for this procurement.

CONTRACTS--LABOR STIPULATIONS--MINIMUM WAGE GUARANTEES

Protest allegation that the contractor should not have to guarantee its employees payment regardless of the quality of the employee's performance while the contractor may be denied payment for inadequate performance is without merit where minimum wage law provisions were included in the RFP.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--
SPECIFICATIONS--MINIMUM NEEDS--NOT OVERSTATED*

Protest allegation that the RFP allows the agency to retain complete control over the curriculum and materials in a procurement for professional educational services is without merit where the terms of the RFP do not prevent the contractor from augmenting the government-furnished

materials or establishing the method in which the materials must be utilized and do not require the agency to approve the contractor's curriculum.

*B-213128 Feb. 27, 1984 84-1 CPD 239
BIDDERS--RESPONSIBILITY V. BID RESPONSIVENESS--INFORMATION*

A solicitation requirement that the low bidder submit specified information prior to award as to its ability to supply and service items being procured relates to responsibility. GAO will not review the sufficiency and relative quality of the information submitted pursuant to such a requirement.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Whether a bidder is capable of performing in accordance with the terms of the solicitation is a matter of that bidder's responsibility as a prospective contractor. Our Office does not review protests against affirmative determination of responsibility absent circumstances not present here.

*B-213289.3 Feb. 27, 1984 84-1 CPD 240
CONTRACTS--PROTESTS--ALLEGATIONS--UNSUBSTANTIATED*

Protester has not shown any impropriety in procuring agency's refusal to consider proposal withdrawn by protester.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
NOT WAIVABLE BY AGENCIES, ETC.*

Protester contends that appeal of untimely protests to procuring agency should be considered because they were filed with GAO within 10 days provided by the procuring agency. GAO Bid Protest Procedures may not be waived by the actions or representations of the procuring agency.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protests alleging defects on the face of solicitations filed with proposals do not constitute timely protests to the contracting agency.

B-213429 Feb. 27, 1984 84-1 CPD 241
CONTRACTS--NEGOTIATION--LATE PROPOSALS QUOTATIONS--BEST AND
FINAL OFFER

Where the United States Postal Service first delivers the protester's best and final offer to the government installation 19 hours after the date specified by the contracting officer for receipt of best and final offers, the protester's offer cannot be considered under the solicitation's late proposal clause since the late delivery was not due solely to government mishandling after receipt at the government installation.

B-214122 Feb. 27, 1984 84-1 CPD 242
BIDDERS--INVITATION RIGHT--BIDDER EXCLUSION NOT INTENDED

The award of a contract is not improper merely because a contracting agency failed to send a bidder a solicitation where there is no evidence to suggest that the agency's failure was deliberate.

BIDS--LATE--HAND CARRIED DELAY--REJECTION OF BID

A late hand-carried bid may not be considered unless there is a showing that wrongful government action was the paramount cause of the lateness.

B-214353 Feb. 27, 1984 84-1 CPD 253
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

GAO does not review an affirmative determination of responsibility absent showing of possible fraud or bad faith by procurement officials or misapplication of a definitive responsibility criteria, circumstances not present here.

B-197787 Feb. 28, 1984
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CONSTRUCTION--
REASONABLE INTERPRETATION

Where a solicitation could reasonably be read as meaning that the contractor must provide storage for government-furnished tapes, the contractor may

be paid an additional amount for furnishing its own tapes instead of being furnished the tapes by the government.

CONTRACTS--PAYMENTS--COMPROMISE AMOUNT

Contractor's entitlement under the contract to payment for providing its own tapes for storage should be measured by the difference between its charge for storage of contractor-furnished tapes and its charge for storage of government-furnished tapes.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--CONSTRUCTION--REASONABLE INTERPRETATION

Contract Disposal clause that provides for return of GAO data files residing on contractor tapes at the conclusion of the contract does not preclude GAO from disposing of unneeded data files residing on contractor tapes simply by leaving them with the contractor.

GENERAL ACCOUNTING OFFICE--CONTRACTS--DISPUTES--SETTLEMENT AUTHORITY

A Hearing Officer designated by the Comptroller General to recommend a disposition of appeals filed by a GAO contractor is not empowered to act for the Comptroller General. Holding of Court of Claims in Fischback and Moore International Corps. v. United States, 617 F.2d 223 (1980) that the head of an agency could not refuse to accept the determination of his board of contract appeals favorable to a contractor is not applicable, since the heads of the agencies involved in that case had delegated their authority to decide contract Disputes clause controversies to their boards, unlike the Comptroller General's designation of his Hearing Officer.

Fact that GAO staff attorney offers legal advice on contractual matters to the GAO contracting office does not preclude the GAO General Counsel from subse-

quently being designated to decide contractor Disputes clause appeals arising from GAO contracts where the General Counsel has no personal involvement in the merits of the claims.

*B-212641 Feb. 28, 1984 84-1 CPD 243
BIDS--"BUYING IN"--NOT BASIS FOR PRECLUDING AWARD*

The fact that an unreasonably low or below-cost bid suggests the possibility of a "buy-in" does not provide any basis on which to submit a protest. In addition, an allegation that an unrealistically low bid of a bidder is due to the bidder's failure to understand what may be required under the contract involves the agency's affirmative determination of the bidder's responsibility which GAO will not review.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS

The determination of the needs of the government and the methods of accommodating such needs are primarily the responsibility of the contracting agency. GAO will not question an agency's assessment of its needs unless the protester shows that the determination is clearly unreasonable. GAO finds that the protester has failed to establish as unreasonable the agency's requirement that work performed under work orders be performed at a rate of \$3,000 per day.

BIDS--INVITATION FOR BIDS--SPECIFICATIONS--UNDERWRITERS LABORATORIES STANDARDS

GAO finds the protester's contention that items meeting the solicitation specifications should also meet the standards of Underwriters Laboratories, Inc., is insufficient to show that the solicitation requirement for Underwriters Laboratory approval is unnecessary. In general, Underwriters Laboratories standards are included in a solicitation to insure that items are designed and constructed to comply with minimum safety standards, to insure better quality control, and to comply with state laws on some construction materials such as electrical equipment.

B-212641 Feb. 28, 1984 84-1 CPD 243
CONTRACTS--LABOR STIPULATIONS--DAVIS-BACON ACT--APPLICABILITY--
CONSTRUCTION CONTRACTS

Where several items under a bid schedule which require separate bid prices are undisputedly for construction work, the agency properly included Davis-Bacon Act wage provisions in the solicitation along with provisions for items covered by the Service Contract Act. GAO also finds that for purposes of recordkeeping the solicitation clearly delineates between those items covered by the Davis-Bacon Act and those items covered by the Service Contract Act.

CONTRACTS--REQUIREMENTS--ESTIMATED AMOUNTS BASIS--BEST
INFORMATION AVAILABLE

When an agency solicits bids for a requirements contract on the basis of estimated quantities, the agency's estimated quantities must be reasonably accurate representations of anticipated actual needs based on the best information available. However, there is no requirement that the estimates be absolutely correct. GAO finds that the agency's estimates in the protested procurement are sufficiently accurate projections of the agency's needs using the best information available.

B-213028 Feb. 28, 1984 84-1 CPD 244
BIDS--OPENING--POSTPONEMENT--CONDITIONS PERMITTING

Contracting officer did not abuse his discretion where he extended the bid opening date 1 week in order to enhance competition by permitting offerors sufficient time to carefully consider and prepare their bids after significant amendment of solicitation scope of work.

B-213684 Feb. 28, 1984 84-1 CPD 246
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--FUTURE
PROCUREMENTS

Protest against provisions of future resolicitation is dismissed as premature.

B-213684 Feb. 28, 1984 84-1 CPD 246 - Con.
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest against award of a contract is rendered
academic by agency's cancellation of solicitation.

B-213724.2 Feb. 28, 1984 84-1 CPD 248
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED

Prior decision which dismissed protest challenging
awardee's ability to comply with solicitation re-
quirements is affirmed since allegation concerns
matter of responsibility which GAO does not general-
ly review.

B-213724.3 Feb. 28, 1984 84-1 CPD 248
GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--
PERFORMANCE--CONTRACT ADMINISTRATION MATTER

Allegation concerning change in contract com-
mencement date concerns a matter of contract
administration, which is the contracting agency's
responsibility, not GAO's.

B-213749 Feb. 28, 1984 84-1 CPD 249
BIDS--MISTAKES--CORRECTION--PROPRIETY

Where protester fails to show that procuring agency
lacked a reasonable basis for determining that the
evidence submitted by the low bidder, i.e., a work-
sheet, estimator's memorandum and affidavit, and bidder's
statement, as to a mistake in bid alleged prior to
award was clear and convincing evidence of that mistake,
how it was made and the intended bid price, then GAO will
deny protest of agency's decision to allow correction of
the bid.

BIDS--MISTAKES--CORRECTION--AFTER BID OPENING--RULE

Although the rule which permits bid correction does
not extend to permitting a bidder to recalculate and
change its bid to include factors which the bidder

did not have in mind when the bid was submitted, the prohibition on recalculation does not apply where the record shows that the bidder both considered the factor in question before bid opening and prepared figures before opening such that by reasonable extrapolation or other method there is clear and convincing evidence of what the bidder would have bid but for the mistake.

*B-213762 Feb. 28, 1984 84-1 CPD 250
BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
WAIVED AS MINOR INFORMALITY*

Failure to acknowledge the receipt of an amendment which merely extends the bid opening date may be waived as a minor informality.

BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED

A bidder's failure to insert a gross shipping weight in its bid does not render the bid nonresponsive where the estimated guaranteed shipping weight was specifically provided in the solicitation in the event the bidder failed to insert the information.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protest challenging the capability of the awardee to perform the contract relates to a matter of responsibility which will not be reviewed absent a showing that the contracting agency acted fraudulently or in bad faith.

*B-214016, B-214016.2 Feb. 28, 1984 84-1 CPD 252
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--PUBLIC OPENING--
NOT REQUIRED*

Agency acted properly in not holding public opening of offers under negotiated procurement because unlike advertised procurements where bids are publicly opened there is no public opening of offers received under a negotiated procurement.

*B-214016, B-214016.2 Feb. 28, 1984 84-1 CPD 252 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protests that procurement should have been advertised and that agency issued confusing solicitation amendments are untimely when not filed prior to closing date for receipt of proposals.

*B-214137 Feb. 28, 1984 84-1 CPD 254
BIDS--"BUYING IN"--NOT BASIS FOR PRECLUDING AWARD*

The possibility of a buy-in is not a proper basis upon which to challenge the validity of an award.

BIDS--COMPETITIVE SYSTEM--FOREIGN CONTRACTORS

Once the differentials of the Buy American Act have been applied, there is no legal basis for objecting to award to a foreign concern which has submitted the best proposal.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

A protest contending that the evaluation criteria of an RFP should have precluded a buy-in by a foreign concern constitutes an alleged impropriety in the RFP which was apparent prior to the date for receipt of initial proposals and is untimely when not received by the contracting agency or by our Office until after award of the contract.

*B-214258 Feb. 28, 1984 84-1 CPD 255
BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT
ACCEPTANCE PERIODS--SHORTER PERIODS--REJECTION OF BID*

Bid offering a bid acceptance period less than that required in the solicitation is nonresponsive and cannot be changed after bid opening since a nonresponsive bid cannot be corrected.

B-212718 Mar. 1, 1984 84-1 CPD 256
*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER*

Protest against solicitation defects filed with GAO more than 10 working days after protester learns of agency's denial of protester's preclosing-date protest to agency is untimely under GAO Bid Protest Procedures.

B-212792 Mar. 1, 1984 84-1 CPD 257
*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

GAO does not review affirmative responsibility determinations in absence of exceptions not present in immediate case.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITIVE RANGE INCLUSION--REASONABLENESS*

Agency decision not to exclude firm from competitive range is primarily a matter of administrative discretion and will not be disturbed absent a clear showing that the decision lacked a reasonable basis. Where record indicates that agency made judgment that with clarifications a firm's proposals had reasonable chance of being selected for award, and that proposal's exclusion would have resulted in only one offeror remaining in competitive range, agency decision to include proposal in competitive range is not objectionable.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE*

GAO will not question the contracting agency's evaluation of the awardee's technical and cost proposal since it had a reasonable basis.

*CONTRACTS--NEGOTIATION--SOLE-SOURCE BASIS--DETERMINATION NOT
TO USE--PROPRIETY*

In view of the objective of bid protest function to insure full and free competition for government contracts, protest that an agency should procure an item on a sole-source basis will not be reviewed.

B-212792 Mar. 1, 1984 84-1 CPD 257 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE FUNCTION--
INDEPENDENT INVESTIGATION AND CONCLUSIONS--SPECULATIVE
ALLEGATIONS

GAO will not conduct investigations under its bid protest function to establish the validity of a protester's speculative statements.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest alleging that agency used proprietary information in developing request for proposals (RFP) and that award of the contract to other than protester under an RFP issued on a competitive basis constitutes an infringement on its proprietary rights is untimely when filed more than 3 months after the RFP closing date.

GENERAL ACCOUNTING OFFICE--JURISDICTION--CONTRACTS--DISPUTES--
BETWEEN PRIVATE PARTIES

Protest that a competitor allegedly used in its proposal the protester's proprietary data presents a dispute between private parties that is not for consideration under the Bid Protest Procedures.

B-214124.2 Mar. 1, 1984 84-1 CPD 258
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Apparent third low bidder is not an "interested party" under GAO Bid Protest Procedures to protest agency decision to permit correction of mistake in apparent low bid where neither the protest nor the agency report submitted in response to prior, identically-worded protest by apparent second low bidder indicated that the second low bidder was not eligible for award.

B-211167.3 Mar. 2, 1984 84-1 CPD 259
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--AMENDMENT--
FAILURE TO ACKNOWLEDGE--WAIVER

Where amendment to RFP changed security clearance requirements, contractin officer's waiver of offeror's failure to acknowledge amendment was proper since solicitation requirement relates to responsibility which may be established at any time prior to award.

CONTRACTS--PROTESTS--ADMINISTRATIVE ACTIONS--ABEYANCE PENDING
PROTEST--NOT REQUIRED--AGENCY CORRECTIONS

Even though a protest is pending before GAO, a contracting officer may review grounds of protest and, if necessary, correct mistakes.

CONTRACTS--TERMINATION--CONVENIENCE OF GOVERNMENT--"BEST
INTERESTS OF THE GOVERNMENT" BASIS--COST V. INTEGRITY OF
COMPETITIVE BIDDING SYSTEM

While it is recognized that as a result of a termination of a contract certain administrative inconveniences will be experienced, in the absence of any indication of substantial adverse impact on the mission of the procuring agency, the preservation of the integrity of the competitive system outweighs the possible administrative inconvenience and disruption which might accompany the corrective action.

CONTRACTS--TERMINATION--CONVENIENCE OF GOVERNMENT--ERRONEOUS
AWARDS

GAO believes that a contracting officer's decision to terminate an improperly awarded contract was reasonable where (1) there was a serious deficiency in the procurement which resulted in award to a firm which had not submitted the low proposal, (2) the firm submitting the low proposal was prejudiced, (3) the contracting officer was, at the time, unaware of any significant costs connected with the terminated contract, and (4) an interim contract awarded to the awardee of the terminated contract mitigated any potential termination costs and minimized any potential interruption of services.

B-213486.2 Mar. 2, 1984 84-1 CPD 260
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

A protest based on alleged improprieties on the face of a solicitation is untimely and will not be considered on the merits where not filed with GAO or the contracting agency prior to bid opening.

B-211330.2 Mar. 5, 1984 84-1 CPD 261
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--PROTESTER
NOT IN LINE FOR AWARD

Protester suspended from contracting is not an "interested party" under GAO Bid Protest Procedures, since suspension renders protester ineligible for award.

B-212895.3 Mar. 5, 1984 84-1 CPD 262
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SIGNIFICANT ISSUE EXCEPTION--NOT FOR
APPLICATION

Untimely protest will not be considered under significant issue exception to timeliness rules because matter appears to concern this procurement and is not of widespread interest.

B-212886 Mar. 5, 1984 84-1 CPD 263
OFFICERS AND EMPLOYEES--CONFLICT OF INTEREST STATUTES--
FAMILY ACTIVITIES

An agency unreasonably rejected a quotation from the son of an agency employee, in order to avoid actual or apparent favoritism or preferential treatment, where the employee, although employed in the administrative district in which the procurement occurred, had no responsibility for the resulting contract, there was no indication that the employee disclosed confidential agency information about the procurement or otherwise influenced the procurement, and adequate competition was publicly sought and obtained.

B-213166 Mar. 5, 1984 84-1 CPD 264
BIDDERS--QUALIFICATIONS--PREAWARD SURVEYS--UTILIZATION--
ADMINISTRATIVE DETERMINATION

Contracting officer has discretion not to conduct a pre-award survey and, in the absence of a showing of fraud or the failure to apply a definitive responsibility requirement, GAO will not review a decision not to conduct a pre-award survey or the contracting officer's affirmative determination of responsibility.

BIDS--RESPONSIVENESS--CONCEPT--NOT APPLICABLE TO NEGOTIATED
PROCUREMENTS

Contracting agency was not required to reject low offeror's initial proposal as nonresponsive since concept of responsiveness generally is not applicable to negotiated procurements.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO

Whether specification requirements are met during performance of a contract is a matter of contract administration which GAO will not consider.

B-213228 Mar. 5, 1984 84-1 CPD 265
BIDS--INVITATION FOR BIDS--AMENDMENTS--ACKNOWLEDGMENT--ORAL--
EFFECT

The oral acknowledgment of a material amendment is not permissible.

BIDS--INVITATION FOR BIDS--AMENDMENTS--FAILURE TO ACKNOWLEDGE--
WAGE DETERMINATION--DEFECT OF SUBSTANCE V. MERELY FORM

An amendment is material, and thus rejection of a bid that fails to include written acknowledgment of it is proper, where the amendment revises a wage rate for carpenters, and there is a reasonable possibility under the provisions of the specifications that the services of carpenters will be needed.

B-213228 Mar. 5, 1984 84-1 CPD 265 - Con.
CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where the only evidence on an issue is the conflicting statements of the contracting agency and the protester, the protester has not met its burden of affirmatively proving its case.

B-214022 Mar. 5, 1984 84-1 CPD 267
BIDS--COMPETITIVE SYSTEM--SUPERIOR ADVANTAGES OF SOME BIDDERS--
INCUMBENCY

Government is not required to equalize competition by considering competitor's advantage according to bidder by reason of incumbency absent unfair government action or preference.

CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Protest against award of a contract to another firm filed 22 days after bid opening is untimely since the basis for the protest was an alleged solicitation impropriety which should have been filed prior to bid opening and the second basis was known by bid opening.

B-214095.3 Mar. 5, 1984 84-1 CPD 268
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest not filed within 10 working days after the protester knew or should have known of the basis of its protest is untimely and will not be considered.

B-210476 Mar. 6, 1984 84-1 CPD 269
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION

GAO has no basis to disturb agency's determination that protester has not supplied sufficient information from which the agency could evaluate the functional equivalence of the protester's equipment with the equipment solicited, where agency requested specific information on equipment protester

offered in response to sole-source solicitation and protester failed to supply all the requested data and where the data actually submitted did not clearly show interchangeability.

*B-210642, et al. Mar. 6, 1984 84-1 CPD 270
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
PROPRIETY--SUBSEQUENT TO UNRESTRICTED SOLICITATION*

Decision to cancel solicitation and thereafter set aside portion of procurement for small business is upheld where agency has shown that set-aside determination was reasonable.

*CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTION--
SOLICITATION CANCELED*

Since agency decision to cancel solicitation had reasonable basis, protest concerning selection and application of transportation rates utilized in evaluation of bids under that solicitation is academic and will not be considered.

CONTRACTS--REQUIREMENTS--SMALL BUSINESS SET-ASIDES

Protest alleging that solicitations are unlawful because they independently commit agency to purchase its total requirements for one-cent blanks from separate sources is denied where review of solicitations indicates that agency has merely set aside a fixed amount of its yearly requirement for small business and that any requirements in excess of that amount would be purchased from firm awarded requirements-type contract under second solicitation.

*BIDS--INVITATION FOR BIDS--AMBIGUITY ALLEGATION--NOT SUSTAINED--
ONLY ONE REASONABLE INTERPRETATION*

Protest alleging that solicitation provisions are ambiguous, contradictory and unduly restrictive is denied where review of provisions in question indicates that they are not ambiguous, contradictory or unduly restrictive.

*B-211831 Mar. 6, 1984 84-1 CPD 271
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO*

Whether bidder in line for award may have engaged in collusive bidding is one circumstance to be considered by the contracting officer in determining whether that bidder is a responsible prospective contractor.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Protester's contention that potential awardee's bid is "nonresponsive" because that firm allegedly does not have the insurance coverage required by the solicitation is without merit because the bid does not limit, reduce or modify the bidder's obligation under the terms of the solicitation. Rather, whether a bidder has obtained the insurance coverage required by a solicitation relates to that firm's responsibility and GAO does not review affirmative determinations of responsibility, except in circumstances not present here.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where protester's allegation that procuring agency intends to award a contract to a bidder that is substantially owned or controlled by government employees is not supported by evidence in the record, protester has failed to meet its burden of proof to show that award to that firm would be contrary to regulatory provision which generally precludes entering into contracts with firms substantially owned or controlled by government employees.

*B-213425 Mar. 6, 1984 84-1 CPD 272
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a)PROGRAM--
INAPPLICABILITY OF NORMAL COMPETITIVE PROCUREMENT PRACTICES*

Within the context of a competitive 8(a) procurement conducted by an executive agency on behalf of the Small Business Administration, the failure

to hold competitive range discussions with all acceptable offerors is not legally objectionable since normal competitive procurement practices are not applicable to 8(a) procurements and the regulations governing such 8(a) competitions do not require discussions.

SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--REVIEW BY GAO

GAO review of an 8(a) procurement is limited to determining whether the Small Business Administration (SBA) has followed applicable regulations and whether government officials have acted fraudulently or in bad faith. Where a contracting agency acts on behalf of the SBA in selecting a contractor for award, the agency's action will be reviewed under the same criteria.

*B-213452 Mar. 6, 1984 84-1 CPD 273
BIDS--COMPETITIVE SYSTEM--ADEQUACY OF COMPETITION--BIDDER NOT TIMELY SOLICITED, ETC.*

Where protester contends it was not orally solicited for certain requirement and agency contends protester was advised of requirement, protest is denied where record indicates miscommunication probably occurred and agency obtained adequate competition and reasonable price.

CONTRACTS--PROTESTS--BURDEN OF PROOF--ON PROTESTER

Where the only evidence on an issue of fact is the conflicting statements of the protester and the contracting officials, the protester has not carried its burden of affirmatively proving its case.

*B-214096 Mar. 6, 1984 84-1 CPD 274
BONDS--BID--DISCREPANCY BETWEEN BID AND BID BOND--BID NONRESPONSIVE*

Bid bond issued to only one of the joint venturers competing for a contract is deficient, since in order to bind a surety, a bond must be issued to the same exact legal entity that is bidding for a

contract. Further, such a bond is a material requirement, and deficiencies generally may not be corrected after opening; rather, the contracting officer must reject the bid as nonresponsive.

*B-214311 Mar. 6, 1984 84-1 CPD 275
CONTRACTS--FEDERAL SUPPLY SCHEDULE--PRICES--REDUCTIONS--
NOTICE*

A Federal Supply Schedule contractor may offer a price reduction to the government at any time and by any method without prior acceptance by the General Services Administration (GSA), and under the contract's terms the price reduction generally will remain in effect for the remainder of the contract. Whether the contractor notifies GSA of the price reduction so that GSA can revise the Schedule prices is a matter for GSA to resolve in administering the contract.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS
ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION*

Accuracy of a firm's representation that it is a small business is irrelevant to the firm's eligibility for the receipt of a purchase order under an existing Federal Supply Schedule contract.

*B-213245.2 Mar. 7, 1984 84-1 CPD 276
BIDS--ALL OR NONE--AWARD TO ONE BIDDER ADVANTAGEOUS*

Agency's rejection of the low aggregate bid due to the omission of item prices, and award to the only other bidder at a higher aggregate price, was improper. The low bid was responsive and should have been accepted for award, since (1) the bid was tantamount to an all or none bid; (2) the IFB did not prohibit all or none bidding; and (3) the bid would result in the lowest cost to the government.

*BIDS--EVALUATION--AGGREGATE V. SEPARABLE ITEMS, PRICES, ETC.--
LOW BIDDER ENTITLEMENT TO AWARD*

An IFB requirement for unit prices (in addition to an aggregate price), which prices were intended to permit

evaluation for multiple award purposes, was not mandatory since the IFB permitted all or none bidding and unit prices would be irrelevant to the evaluation of an all or none bid.

*B-213308 Mar. 7, 1984 84-1 CPD 277
BIDS--RESPONSIVENESS--EXCEPTIONS TAKEN TO INVITATION TERMS*

Bid which offered to furnish aluminum instead of steel exhaust fan propellers took exception to a material requirement of the IFB and therefore was properly rejected as nonresponsive.

*BIDS--RESPONSIVENESS--OFFER OF COMPLIANCE AFTER BID OPENING--
ACCEPTANCE NOT AUTHORIZED*

A nonresponsive bid may not be corrected after bid opening, since permitting a bidder to do so would be tantamount to allowing the submission of a new bid.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest alleging improprieties in an IFB apparent prior to bid opening must be filed before bid opening in order to be considered.

*B-214287 Mar. 7, 1984 84-1 CPD 278
CONTRACTS--NEGOTIATION--AWARDS--PROPRIETY--UPHELD*

Protest that government "hurried" the contract award process to take advantage of a lower alternate offer is denied because there is no requirement that the government wait a minimum number of days after best and final offers before making award.

*CONTRACTS--NEGOTIATION--LATE PROPOSALS AND QUOTATIONS--
MODIFICATION OF PROPOSAL--CONSIDERATION PROPRIETY--UNDER DAR
PROVISION*

Protest that Defense Acquisition Regulation 7-2002.4(e) requires government to accept protester's late modification that would have made it the low offeror is denied because

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affirmative action requirements, is dismissed because union is not an "interested" party for purposes of these issues under GAO Bid Protest Procedures.

CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO

Whether specification requirements are met during performance of contract is a matter of contract administration which GAO will not consider.

CONTRACTS--PROTESTS--CONFERENCES--REQUEST DENIED--PROTEST NOT FOR CONSIDERATION ON THE MERITS

Protester's request for a conference on protest is denied since conference would serve no useful purpose.

*B-214346, B-214436.2 Mar. 12, 1984 84-1 CPD 287
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

A protest against a solicitation's bonding requirement is untimely filed under GAO Bid Protest Procedures where the protest is transmitted by Western Union and GAO receives the transmission after bid opening.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SMALL BUSINESS ADMINISTRATION'S AUTHORITY--SIZE DETERMINATION

GAO will not consider a protest alleging that a bidder is not a small business concern since by law the Small Business Administration has the authority to determine conclusively a concern's small business size status.

*B-214428 Mar. 12, 1984 84-1 CPD 288
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR RESOLUTION BY GAO*

Where an option is exercisable at the discretion of the government, the decision not to exercise the option is a matter of contract administration which GAO will not review under its bid protest function.

*B-214428 Mar. 12, 1984 84-1 CPD 288 - Con.
CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT--POTENTIAL
CONTRACTORS, ETC. NOT SUBMITTING BIDS, ETC.*

Protester will not be considered an interested party to protest bias in favor of an offeror since the protester did not submit an offer and, therefore, was not eligible for award.

*B-210390 Mar. 13, 1984 84-1 CPD 289
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO*

Whether an offeror's lack of integrity is sufficient to warrant a finding of nonresponsibility is a matter primarily for decision by the administrative officers concerned, and GAO will not question their decision absent a clear showing that it lacked a reasonable basis.

*B-211180 Mar. 13, 1984 84-1 CPD 290
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

The determination of the relative merits of technical proposals is the procuring agency's responsibility, and GAO will not disturb such a determination unless shown to lack a reasonable basis or to violate procurement statutes or regulations.

*CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--ADDITIONAL
EVALUATION FACTORS--NOT IN REQUEST FOR PROPOSALS*

Contention that a proposal should have been rejected for its failure to meet a requirement to eliminate the use of expendable reagents from the proposed organic carbon monitoring system is without merit where the request for proposals clearly made the elimination a goal rather than a firm requirement and one of two approaches set forth in the proposal did not require expendable reagents.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--
FAILURE TO MEET SOLICITATION REQUIREMENTS*

GAO does not find unreasonable an agency's judgment that protester's proposal did not fully satisfy a requirement to propose two separate approaches to the

problem where the proposed approaches were not as dissimilar as approaches proposed by the awardee and where only one approach was fully described and developed in the protester's proposal.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
TECHNICAL ACCEPTABILITY--ADMINISTRATIVE DETERMINATION*

Agency's judgment that protester's approach to developing sophisticated technical hardware presents an unnecessarily high-risk research and development effort will not be questioned where protester did not attempt to establish the technical feasibility of the approach within the confines of its proposal.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--QUALIFICATION
OF OFFERORS--ADEQUACY OF FINANCES, PERSONNEL, FACILITIES,
ETC.*

Agency determination that protester's proposal was lacking with regard to the number of manhours proposed is clearly supported by the record where the other offerors in the technical range proposed more than twice as many manhours.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
INSPECTION OF FACILITIES--NOT REQUIRED*

There is no requirement that a procuring agency inspect the facilities or interview the employees of an offeror responding to a request for proposals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--COST REALISM--
REASONABLENESS*

Award to a technically superior offeror with a 43 percent higher proposed cost than protester will not be questioned where a cost realism analysis, reasonable on its face and not objected to by the protester, indicates that the technically superior offer will actually cost the same or less than the protester's.

*B-211180 Mar. 13, 1984 84-1 CPD 290 - Con.
CONTRACTS--AWARDS--RETIRED GOVERNMENT EMPLOYEES--RIGHT TO
COMPETE FOR AWARD*

No statute or regulation sanctions the exclusion of former government employees from obtaining government contracts.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--SUBSTITUTE
OFFEROR*

Substitution of offeror after the receipt of best and final offers is permitted where the new offeror has purchased the entire portion of the initial offeror's business that is embraced by the proposal.

*B-212782 Mar. 13, 1984 84-1 CPD 291
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protest that RFP failed to specify adequately when alternate products would be considered to be acceptable is untimely since the protest concerns an alleged solicitation defect but was not filed prior to the closing date for receipt of initial proposals.

*CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--REJECTION--
FAILURE TO MEET SOLICITATION REQUIREMENTS--SUBMISSION OF
TECHNICAL DATA*

Proposal containing a blanket offer to furnish a product satisfactory to the government was properly rejected since the protester did not furnish technical data required by the RFP to establish the acceptability of its product.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL
PROTEST BASIS*

Protest against test procedures and the results of testing the protester's sample are untimely where the protest was filed more than 10 working days after the protester knew of the procedures used and the results achieved.

B-213005 Mar. 13, 1984 84-1 CPD 292
BIDS--INVITATION FOR BIDS--CANCELLATION--AFTER BID OPENING--
SCOPE OF WORK CHANGED

Where a predicted change in river water level caused revision in the government's delivery schedule with regard to a procurement for removing, cleaning and inspecting motors at a navigation canal lock, cancellation of the solicitation was justified even after bids were opened.

BIDS--PREPARATION--COST--NONCOMPENSABLE--INVITATION PROPERLY
CANCELED

Claim for bid preparation costs is denied where cancellation of solicitation was justified.

B-213057 Mar. 13, 1984 84-1 CPD 293
ADVERTISING--COMMERCE BUSINESS DAILY--INFORMATION--DATE OF
BID OPENING, ETC.--CONSTRUCTIVE NOTICE FROM PUBLICATION

Publication of a synopsis in the Commerce Business Daily constitutes constructive notice to prospective offerors of a solicitation and its contents.

BIDDERS--INVITATION RIGHT--INVITATION NOT RECEIVED

Failure to provide protester with copy of solicitation does not render award improper where protester has neither alleged nor shown that procuring agency deliberately precluded protester from competing and did not receive adequate competition without protester's participation.

B-213143 Mar. 13, 1984 84-1 CPD 294
CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--
MINIMUM NEEDS--ADMINISTRATIVE DETERMINATION

Where protester alleges that specifications for calibration systems are unduly restrictive of competition, contracting agency is required to make prima facie case that specifications are related to its minimum needs. However, once contracting agency has made prima facie

case, protester must bear burden of affirmatively proving its case. Protester fails to carry this burden when its arguments do not show that agency's determination of its actual minimum needs has no reasonable basis.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Protester's allegation of inadequacy of specifications is untimely pursuant to 4 C.F.R. 21.2(b)(1), since it relates to an apparent impropriety which should have been protested prior to the closing date for receipt of initial proposals.

*STATUTORY CONSTRUCTION--LEGISLATIVE INTENT--APPROPRIATION
ACT V. COMMITTEE REPORT*

Restrictive language contained in congressional appropriation committee reports is not legally binding on an agency where those expressions are not carried over into an appropriation act.

*B-213176 Mar. 13, 1984 84-1 CPD 295
BIDS--ACCEPTANCE TIME LIMITATION--BIDS OFFERING DIFFERENT
ACCEPTANCE PERIODS--SHORTER PERIODS--REJECTION OF BID*

A bid that offers a bid acceptance period less than that required in the solicitation is nonresponsive and the fact that award was made within the shorter period is irrelevant.

*BIDS--RESPONSIVENESS--TEST TO DETERMINE--UNQUALIFIED OFFER
TO MEET ALL SOLICITATION TERMS*

Where a bidder makes an unqualified offer to comply with the solicitation's terms, the bid is responsive and acceptance binds the bidder to comply with those terms. Whether the firm in fact does so involves a matter of contract administration for which the agency is responsible.

B-213253 Mar. 13, 1984 84-1 CPD 296
BIDS--RESPONSIVENESS--BRAND NAME OR EQUAL PROCUREMENT

In a brand name or equal procurement, where the solicitation specifies the thickness dimension for corner plates, the contracting officer improperly accepted a bid deviating from the dimension.

B-213489 Mar. 13, 1984 84-1 CPD 298
PAYMENTS--QUANTUM MERUIT/VALEBANT BASIS--ABSENCE, ETC. OF
CONTRACT--GOVERNMENT ACCEPTANCE OF GOODS/SERVICES

Contractor who provided requested pad holders with silk screen printing to the government pursuant to an unauthorized oral request may be paid on a quantum valebant basis since the government received the benefit of the supplies. However, payment for the pad holders is limited to the amount for which they should have been purchased under a mandatory Federal Supply Schedule contract, plus a reasonable value for the silk screen printing.

B-213520 Mar. 13, 1984 84-1 CPD 299
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATION DISCRETION

GAO will not reevaluate proposals, but rather limits review to examination of whether evaluation is reasonable and in accord with listed criteria. GAO will not disturb contracting agency's evaluation of protester's technical proposal unless protester shows abuse of discretion or violation of procurement statutes regulations.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
COMPETITION RANGE DETERMINATION--OFFEROR ENTITLEMENT TO
GENERAL EXPLANATION OF BASIS

An offeror whose proposal has been determined to be outside the competitive range is entitled, before award, only to a general explanation of the basis for the competitive range determination.

*B-213520 Mar. 13, 1984 84-1 CPD 299 - Con.
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALAUTION--
COMPETITIVE RANGE EXCLUSION--REASONABLENESS*

GAO will not disturb procuring agency's exclusion of protester from competitive range based on weaknesses in protester's proposal and on relative superiority of the competition, where protester has not shown that exclusion from competitive range was unreasonable or in violation of procurement statutes or regulations.

*B-213584 Mar. 13, 1984 84-1 CPD 300
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--ADMINISTRATIVE DETERMINATION*

GAO will not review protest against affirmative determination of responsibility except in circumstances not applicable here. Contracting officer was not required to refer affirmative determination of responsibility to the SBA for a certificate of competency.

*CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO*

GAO will not review protest against contracting officer's negative determination of responsibility which was affirmed by Small Business Administration (SBA) because protester has not made a showing of fraud or a willful disregard of the facts.

*B-213688 Mar. 13, 1984 84-1 CPD 301
BIDS--RESPONSIVENESS--MAKE, MODEL NUMBER, ETC. LISTED OF
UNACCEPTABLE EQUIPMENT, ETC.*

Bid which included an unsolicited model number should be rejected as nonresponsive where commercial literature available prior to bid opening does not demonstrate that the model conforms to the specifications.

B-213811 Mar. 13, 1984 84-1 CPD 302
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS

Alleged improprieties not existing in the initial solici-
tation but subsequently incorporated therein must be
protested not later than the next closing date for
receipt of proposals to be timely under 4 C.F.R.
21.2(b)(1).

Protest alleging defects apparent on the face of
a solicitation which is filed with a proposal does not
constitute a timely protest to the contracting agency.

B-213913 Mar. 13, 1984 84-1 CPD 303
CONTRACTS--PROTESTS--MOOT, ACADEMIC, ETC. QUESTIONS--
SOLICITATION CANCELED

Protest against restrictive specifications is dismissed
as academic where solicitation containing the specifi-
cations is canceled.

B-214240 Mar. 13, 1984 84-1 CPD 304
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
FINDING--NONRESPONSIBILITY FINDING--REVIEW BY GAO

GAO generally will not review a contracting officer's
determination of nonresponsibility with respect to a
small business bidder since by law the Small Business
Administration (SBA) is empowered to conclusively deter-
mine the responsibility of a small business.

CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--REVIEW BY GAO--
SCOPE--CERTIFICATE OF COMPETENCY REQUIREMENT

GAO will not review the SBA's decision not to issue a
certificate of competency where the protester fails to
make a prima facie showing of fraud or willful disregard
of the facts.

B-214427 Mar. 13, 1984 84-1 CPD 305
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest concerning the rejection of a bid as unreasonably low filed with GAO more than 10 days after the protester received written notice from the agency of the basis for the rejection of its bid and of award to another bidder is untimely and not for consideration on the merits.

B-214448, B-214484 Mar. 13, 1984 84-1 CPD 306
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--PRIOR TO
RESOLUTION OF SIZE PROTEST

Agency properly awarded small business set-aside contracts to a firm determined to be small by a SBA regional administrator where the awards were made after the regional administrator's ruling but prior to the protester's appeals to the SBA's Office of Hearings and Appeals for a final ruling.

B-214481 Mar. 13, 1984 84-1 CPD 307
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--REVIEW BY GAO--
SCOPE--CERTIFICATE OF COMPETENCY REQUIREMENT

GAO will not review rejection of the low bid of a small business bidder as nonresponsible where the bidder failed to file an application for a certificate of competency with the Small Business Administration.

B-214379 Mar. 14, 1984 84-1 CPD 308
CONTRACTS--IN-HOUSE PERFORMANCE V. CONTRACTING OUT--COST
COMPARISON--EXHAUSTION OF ADMINISTRATIVE REMEDIES

GAO will not consider a protest of the cost comparison calculation made by an agency to determine, in accord with Office of Management and Budget Circular No. A-76, whether to perform services in-house or to contract them out until protester has exhausted the contracting agency's administrative review procedures.

B-213332 Mar. 15, 1984 84-1 CPD 309
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT

Where firm initially protests alleged specification defects to contracting agency prior to bid opening, opening of bids is initial adverse agency action on protest and subsequent protest to GAO must be filed within 10 working days of protester's actual or constructive knowledge of that action.

B-213812 Mar. 15, 1984 84-1 CPD 310
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Protest filed in GAO several months after protester knew its basis for protest is untimely, where neither GAO nor procuring activity received a letter which allegedly protested the procurement and allegedly was submitted in a timely fashion.

B-213936 Mar. 15, 1984 84-1 CPD 311
CONTRACTS--DEFAULT--TERMINATION OF CONTRACT--CLAIM SETTLEMENT

Defaulted timber sale contractor's allegations that the Forest Service has not resold timber at the highest obtainable price or reasonably attempted to mitigate damages are matters "relating to" the original contract, and they therefore must be resolved by the Department of Agriculture Board of Contract Appeals.

CONTRACTS--PROTESTS--INTERESTED PARTY REQUIREMENT

Since defaulted timber sale contractor is not eligible to bid, it is not an interested party for purposes of protesting the procedures followed during an oral auction for resale of the same timber. Exclusion of bidders who have failed to complete timber sale contracts is specifically permitted by Forest Service regulations and has been upheld by the courts and by GAO.

*B-214194 Mar. 15, 1984 84-1 CPD 312
BIDDERS--QUALIFICATIONS--LICENSE REQUIREMENT--GENERAL V.
SPECIFIC--EFFECT ON RESPONSIBILITY*

Where a solicitation contains only a general licensing requirement and does not indicate that a specific state or city business license is required, the contracting officer may place the responsibility for determining compliance upon the prospective contractor. In such circumstances, the contracting officer's affirmative determination of responsibility will not be questioned by GAO even if the contractor does not hold all required business licenses or permits at time of award.

CONTRACTS--AWARDS--PROTEST PENDING--LEGALITY OF AWARD

Even if agency did not comply with regulatory requirements of FRP before making award after notice of protest, failure is a procedural defect and the validity of award is not affected.

*B-214515 Mar. 15, 1984 84-1 CPD 313
SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
AWARD VALIDITY--REVIEW BY GAO*

The determination that a firm is eligible for award under section 8(a) of the Small Business Act is a matter for the SBA and therefore will not be reviewed by GAO absent a showing of possible fraud or bad faith on the part of government officials or a possible violation of applicable regulations.

*SMALL BUSINESS ADMINISTRATION--CONTRACTS--CONTRACTING WITH
OTHER GOVERNMENT AGENCIES--PROCUREMENT UNDER 8(a) PROGRAM--
REVIEW BY GAO*

The determination to set aside a procurement under section 8(a) of the Small Business Act is a matter for the contracting agency and the Small Business Administration, and therefore will not be reviewed by GAO absent a showing of possible fraud or bad faith on the part of government officials or a possible violation of applicable regulations.

B-214526 Mar. 15, 1984 84-1 CPD 314
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO CLOSING DATE FOR RECEIPT OF QUOTATIONS

Protest concerning alleged anticompetitive specifications apparent in request for quotations filed after closing date for receipt of quotations is untimely and not for GAO consideration under Bid Protest Procedures.

B-211984 Mar. 16, 1984 84-1 CPD 315
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
ADMINISTRATIVE DETERMINATION

GAO standard of review in bid protests is not independently to determine which proposal is most advantageous to the government, but to consider whether contracting agency's selection is legally objectionable.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--"PRICE AND OTHER FACTORS"

When solicitation specifies that award will be made on the basis of "price and other factors," award must go to the lowest-priced, responsible offeror whose proposal is acceptable under the evaluation factors listed in a solicitation, and evaluation credit may not be given for factors that are not listed.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
LIFE-CYCLE COSTING

Because applicable regulations require agency to evaluate costs for utility contract over anticipated period of service, evaluation for only first year in which full services will be provided is improper. In absence of a solicitation provision for addition of inflation factor, however, one may not be added to evaluated costs.

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actual needs to permit full and free competition on an equal basis, the agency has a compelling reason for cancellation after bid opening.

*B-213565 Mar. 16, 1984 84-1 CPD 319
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED--
INVITATION FOR BIDS ATTACHMENTS, ETC.*

Bid which omits Standard Form 21, Bid Form for construction contracts, containing material provisions, is nonresponsive since bid does not incorporate or reference the material provisions omitted so that bidder, upon acceptance of bid, clearly would be bound to those material requirements.

*B-214388 Mar. 16, 1984 84-1 CPD 320
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest filed with GAO more than 10 working days after initial adverse action by contracting agency on protest filed with contracting agency is dismissed as untimely. Protester's continued pursuit of protest with contracting agency does not change this result.

*B-214424 Mar. 16, 1984 84-1 CPD 321
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--SET-ASIDES--
STATUS OF BIDDERS*

Award of a contract set aside for small business to a firm ultimately determined to be other than small is not legally objectionable where the contracting officer was not on notice of the appeal of the Small Business Administration's (SBA) district office decision at the time he made award and where the SBA's final ruling in the matter was not received until well after the expiration of the maximum procurement suspension period required by regulation.

*B-213041 Mar. 19, 1984 84-1 CPD 322
BIDS--INVITATION FOR BIDS--AMBIGUITY ALLEGATION--NOT SUSTAINED--
ONLY ONE REASONABLE INTERPRETATION*

A solicitation is ambiguous only if two or more reasonable interpretations of its provisions are

possible. Where the plain meaning of the solicitation's language permits only one reasonable interpretation, a protest alleging the existence of an ambiguity in the solicitation is denied.

*BIDS--INVITATION FOR BIDS--SPECIFICATIONS--MINIMUM NEEDS
REQUIREMENT--ADMINISTRATIVE DETERMINATION--REASONABLENESS*

The contracting agency has the primary responsibility for drafting specifications which reflect the minimum needs of the government. Protester's complaint that the agency's required manpower levels for full food services were set too high is rejected where the protester fails to show the lack of a reasonable basis for the agency's determination that the stipulated levels are necessary to meet its needs.

BIDS--PRICES--BELOW COST

Protest that other bids are too low to permit compliance with the solicitation's minimum manning requirements is denied. Rejection of a bid as too low requires the agency to find the bidder nonresponsible, and GAO does not review affirmative determinations of responsibility absent a showing of possible fraud or bad faith on the part of procuring officials or the misapplication of a definitive responsibility criteria, circumstances not present here.

*B-213371.2 Mar. 19, 1984 84-1 CPD 323
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF COMMENTS ON AGENCY'S REPORT*

The fact that a protester's comments on an agency report were erroneously addressed and sent to the contracting agency rather than GAO does not merit reopening a case which was closed because the protester did not send a timely indication of its continued interest in the protest to GAO.

*B-213442 Mar. 19, 1984 84-1 CPD 324
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

A protest filed with GAO alleging a defect in the solicitation is untimely under GAO Bid Protest Procedures where an initial protest was untimely filed with the contracting agency.

*B-213442 Mar. 19, 1984 84-1 CPD 324 - Con.
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT--
SOLICITATION IMPROPRIETIES*

Initial adverse agency action on a protest filed with the agency occurs when the contracting officer accepts proposals on the proposal due date without correcting the alleged defects in the solicitation. A subsequent protest to GAO must be filed within 10 working days from the date of this initial adverse agency action to be considered.

*B-213689 Mar. 19, 1984 84-1 CPD 325
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--PROTEST NOT RECEIVED*

Protest against an IFB specification must be filed prior to bid opening. Even if a letter to the contracting agency requesting clarification of the solicitation, allegedly sent before bid opening, could be considered a protest, it was never received by the agency, so that the post-bid opening protest to GAO is viewed as the firm's initial complaint, and thus is untimely filed. The fact that the letter to the agency, sent by regular mail, may have been lost in the mails does not serve as a basis for considering the untimely protest.

*B-213799 Mar. 19, 1984 84-1 CPD 326
BIDS--INVITATION FOR BIDS--CANCELLATION--ERRONEOUS--REVIVAL
OF EXPIRED BIDS--ORIGINAL BIDS RETURNED TO BIDDERS*

Procuring agency's decision, following termination of protester's contract, to award to original low bidder on the basis of a revived bid was proper where agency's misinterpretation of specifications resulted in withdrawal of low bid on the basis of a mistake that did not exist.

*CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Allegation that awardee has not met contract specifications is a question of contract administration and does not affect the validity of the award.

*B-211164 Mar. 20, 1984 84-1 CPD 327
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--CONFORMABILITY OF
EQUIPMENT, ETC. OFFERED--COMMERCIAL LITERATURE--PUBLICLY
AVAILABLE*

Protest of agency rejection of bid, containing unsolicited model designation, as nonresponsive is denied where protester has failed to establish existence (prior to bid opening) of publicly available commercial literature which could cure ambiguity created by its insertion of unsolicited model designation.

*CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--
AFFIRMATIVE FINDING ACCEPTED*

Allegations concerning agency's acceptance of awardee's equipment are matters of contract administration which is responsibility of agency and not for resolution under bid protest procedures.

*B-211484.2 Mar. 20, 1984 84-1 CPD 328
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED*

Prior decision is affirmed where request for reconsideration fails to raise new issues of fact or to demonstrate that errors of law exist in the prior decision.

*B-211847 Mar. 20, 1984 84-1 CPD 329
CONTRACTS--FEDERAL SUPPLY SCHEDULE--AWARDS--PROPRIETY*

General Services Administration's failure to promptly modify extant Federal Supply Schedule contract to provide for inclusion of items awarded under contested purchase order is not significant where GSA ultimately corrected failure.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--ADVERSE AGENCY ACTION EFFECT*

Protest that competitor's products are not equal to the brand name specified is timely under Bid Protest Procedures when filed within 10 working days after

notification of procuring agency's initial adverse agency action on protest; nevertheless, GAO cannot question acceptance of lower priced Federal Supply Schedule items, especially in view of Army's unrefuted position that, in response to protest, competitor clarified quotation to show that offered products would be identical to specified products.

*BUY AMERICAN ACT--CONTRACTOR COMPLIANCE WITH CERTIFICATION--
CONTRACT ADMINISTRATION MATTER*

GAO will not review protest challenging offeror's intended compliance with representation in its Buy American certification that domestic source end products will be supplied.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
CONSTRUCTIVE NOTICE*

Lack of actual knowledge of Bid Protest Procedures does not excuse late filing of protest.

*CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--NEW ISSUES--UNRELATED TO ORIGINAL
PROTEST BASIS*

Protest issue raised after protester's receipt of agency report on original timely protest is dismissed as untimely. Later-raised issue must independently satisfy timeliness rules of our Bid Protest Procedures. Later-raised issue concerns the proper application of protester's discounts and should have been known to protester not later than May 6, 1983, when it knew that procuring agency had authorized awardee to complete delivery. Since the issue was raised approximately 3 months after the initial protest was filed, it is untimely. Moreover, issue concerning propriety of request for quotations procurement approach should have been raised before quotations were due.

*B-212441 Mar. 20, 1984 84-1 CPD 330
BIDS--EVALUATION--DELIVERY PROVISIONS--REASONABLE DELIVERY
DATE*

Where invitation expresses delivery time in terms of "desired" rather than "required" time, bidder may offer

any time for delivery as long as it is within reasonable time of "desired" time without rendering its bid nonresponsive; nevertheless, GAO recommends that procuring agency also stipulate "required" delivery time in future.

*B-213162 Mar. 20, 1984 84-1 CPD 332
BIDS--LATE--TIME OF RECEIPT DETERMINATION--EVIDENCE TO ESTABLISH*

A late bid delivered by a commercial carrier may be considered if the lateness is due to the improper action of the government after the bid is received. However, before GAO can consider the question of wrongful government action, the time of the agency's receipt of the bid must be established. GAO finds that records of commercial carrier showing delivery to the agency's installation prior to bid opening are insufficient to establish that the awardee's bid, in fact, was received by the agency prior to bid opening.

*B-213330 Mar. 20, 1984 84-1 CPD 333
CONTRACTORS--RESPONSIBILITY--DETERMINATION--DEFINITIVE RESPONSIBILITY CRITERIA--COMPLIANCE*

Protest alleging that low bidder did not meet 3-year experience requirement set forth in IFB because low bidder had not been incorporated for 3 years is denied. Low bidder and its predecessor organization had been incorporated for approximately 2 years, 11 months, at time of award and provided job references to show that it had been doing similar work to that required by IFB prior to incorporation. In these circumstances, contracting officer's determination that low bidder met experience criterion was reasonably based on evidence provided by low bidder.

*B-213340 Mar. 20, 1984 84-1 CPD 334
CONTRACTORS--RESPONSIBILITY--DETERMINATION--REVIEW BY GAO--NONRESPONSIBILITY FINDING*

An agency's determination that the protester was not a responsible prospective contractor is not legally objectionable where there is no allegation of agency bad faith

and the record shows that the determination was based on facts disclosed by a preaward survey that, taken together, created uncertainty as to the protester's ability to comply with the contract's delivery schedule.

*B-213456 Mar. 20, 1984 84-1 CPD 335
BIDS--RESPONSIVENESS--FAILURE TO FURNISH SOMETHING REQUIRED*

Bid submitted with material provisions deleted was properly rejected as nonresponsive and may not be corrected after bid opening to be made responsive at the bidder's option since an unfair advantage would be gained.

*B-213482 Mar. 20, 1984 84-1 CPD 336
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--SOLICITATION IMPROPRIETIES--APPARENT
PRIOR TO BID OPENING/CLOSING DATE FOR PROPOSALS*

Allegation after bid opening that due to detailed nature of specifications there was no need for descriptive literature will not be considered since the allegation concerns an alleged defect in the solicitation and it should have been protested prior to bid opening.

*BIDS--RESPONSIVENESS--DESCRIPTIVE LITERATURE--INDICATION THAT
ITEM OFFERED FAILED TO MEET SPECIFICATIONS*

Rejection of a low bid as nonresponsive is proper where descriptive data required to be submitted with the bid for evaluation purposes demonstrates deviation from the specifications.

*B-214151 Mar. 20, 1984 84-1 CPD 338
CONTRACTS--PROTESTS--CONTRACT ADMINISTRATION--NOT FOR
RESOLUTION BY GAO*

Protest alleging that contract awardee is not performing in accordance with contract specifications concerns a matter of contract administration and will not be considered under GAO Bid Protest Procedures.

B-214162.2 Mar. 20, 1984 84-1 CPD 339
CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--
TIMELINESS OF PROTEST--DATE BASIS OF PROTEST MADE KNOWN TO
PROTESTER

Prior decision dismissing protest as untimely is affirmed on reconsideration where the protester failed to file protest against agency failure to furnish copy of solicitation, the existence of which was published in the Commerce Business Daily, within 10 days after the initial closing date or extension thereof.

B-214594 Mar. 20, 1984 84-1 CPD 340
CONTRACTS--SMALL BUSINESS CONCERNS--AWARDS--RESPONSIBILITY
DETERMINATION--NONRESPONSIBILITY FINDING--REVIEW BY GAO

Protest of agency determination that small business bidder is nonresponsible is dismissed since by law the Small Business Administration, to which the matter has been referred, conclusively determines the responsibility of small business bidders.

B-213562 Mar. 22, 1984 84-1 CPD 341
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
REASONABLE

GAO will not question an agency's technical evaluation unless the protester shows the agency's judgment lacked a reasonable basis, was an abuse of discretion, or otherwise was in violation of procurement statutes or regulations.

Protest by lower cost offeror against the selection of a contractor is denied since, in view of the evaluation results and the RFP's cost/technical weighting scheme, GAO cannot conclude that the selection was unreasonable.

B-212925 Mar. 23, 1984 84-1 CPD 342
BIDS--INVITATION FOR BIDS--SPECIFICATIONS--TESTS--ADMINISTRATIVE
DETERMINATION

Agency decision, after bid opening, to conduct independent tests to determine if equipment meets core requirements of solicitation rather than accept bidder's self-certification in bid is proper to determine actual compliance with core requirements in view of agency doubts raised by protest.

BIDS--RESPONSIVENESS--PRICING RESPONSE--MINOR DEVIATIONS FROM
IFB REQUIREMENTS

Where solicitation required that option prices not contain nonrecurring or startup costs, fact that bidder bid the same price for basic and option quantities does not show violation of requirement because bidders were not required to submit cost breakdown and inflation during 5-year contract could account for higher option price.

B-213945 Mar. 23, 1984 84-1 CPD 343
BIDS--COMPETITIVE SYSTEM--ORAL ADVICE ERRONEOUS--INVITATION
FOR BIDS--INTERPRETATION

An offeror relies on a contracting agency's oral advice, which conflicts with the clear language of the specifications, at its own risk where the solicitation specifically states that oral advice as to the interpretation of solicitation provisions will not be binding.

BIDS--INVITATION FOR BIDS--AMBIGUITY ALLEGATION--NOT SUSTAINED--
ONLY ONE REASONABLE INTERPRETATION

Where a solicitation for furnishing patrol boats based on an "off-the-shelf" parent craft design contains a provision expressly requiring that the patrol boat have a "propulsion configuration" identical to that of the parent craft, it is not reasonable to interpret another provision permitting "propulsion plant" substi-

tutions as permitting "propulsion configuration" changes, where it is clear from the solicitation that the terms were not being used interchangeably.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--BEST AND FINAL--FAILURE TO REQUEST--UNACCEPTABLE PROPOSAL

A procuring agency may revise its initial competitive range determination to eliminate a proposal formerly considered within the range, where discussions reveal that the proposal no longer has a reasonable chance of being accepted for award. The offeror submitting the excluded proposal need not be given an opportunity to submit a best and final offer.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--CRITERIA--ADMINISTRATIVE DETERMINATION

Where an agency conducts a procurement under its own internal procedures, its failure to establish an evaluation scheme precisely in accordance with those procedures, which serve only as guidance, is not improper.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--RESTRICTIVE--AGENCY DETERMINATION TO USE LESS RESTRICTIVE SPECIFICATIONS

An agency need not relax or revise solicitation requirements which reflect its legitimate minimum needs, and GAO will not question an agency's decision to relax certain specifications while refusing to relax others absent evidence of favoritism, fraud or intentional misconduct by government officials.

CONTRACTS--NEGOTIATION--REQUESTS FOR PROPOSALS--SPECIFICATIONS--RESTRICTIVE--UNDUE RESTRICTION NOT ESTABLISHED

A solicitation requirement that the propulsion configuration and other material design features of the required patrol boat be identical to the parent craft is not unduly restrictive where the agency's legitimate minimum needs include a requirement that the patrol boat be proven, in all material respects, in actual performance; a change in the

propulsion configuration, supported by a technical opinion that the patrol boat's performance would not be adversely affected, does not satisfy the agency's need for proven performance.

ESTOPPEL--AGAINST GOVERNMENT--RULE

There exists no basis under the doctrine of estoppel for requiring a contracting agency to consider for award a proposal which does not meet the government's minimum needs.

*B-210032.2 Mar. 26, 1984 84-1 CPD 344
BIDS--PREPARATION--COSTS--RECOVERY*

Claim for bid preparation costs is allowed since the record establishes that the agency's affirmative determination of responsibility of the awardee was arbitrary and capricious and the protester had a substantial chance for award.

CONTRACTS--PROFITS--ANTICIPATED

No legal basis exists that allows an unsuccessful bidder to recover anticipated profits or similar monetary damages.

*B-210714 Mar. 26, 1984 84-1 CPD 345
CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--EVALUATION--
CRITERIA--APPLICATION OF CRITERIA*

Where record indicates that evaluation of protester's proposal was in accordance with established criteria set forth in solicitation and the evaluation was reasonable, protest based on offeror's disagreement with the evaluation is denied.

*CONTRACTORS--CONFLICT OF INTEREST--ORGANIZATIONAL--AGENCY
DETERMINATION--REASONABLE BASIS*

Protest that award to selected contractor will create an organizational conflict of interest is denied where alleged conflicts pertain to overlapping

roles in support of different organizational elements within the same agency, and agency states that it will monitor the placing of task orders to avoid such conflict as exists.

CONTRACTS--NEGOTIATION--OFFERS OR PROPOSALS--DISCUSSION WITH ALL OFFERORS REQUIREMENT--"MEANINGFUL" DISCUSSIONS

Where agency questions offeror's overall approach to a particular task during the course of oral discussions in procurement involving specialized technical services, protest that discussions were too generalized is denied because, as the solicitation advised, proposals were evaluated primarily upon the basis of the offeror's demonstrated knowledge and understanding of the services to be provided. Consequently, because the offeror's understanding of the work was to be evaluated, not the procuring agency's, the agency was not required to provide detailed guidance on how proposals could be upgraded.

Protest alleging that the procuring agency failed to indicate the seriousness of the deficiencies noted in the protester's proposal during discussions is denied where the record shows that the agency asked the offeror to clarify its understanding of the level of effort required and its proposed approach to four of the seven areas evaluated. Such fundamental questioning of the proposal meaningfully conveyed the seriousness of the deficiencies indicated.

CONTRACTS--PROTESTS--ALLEGATIONS--SPECULATIVE

Bare allegation that procuring agency fabricated procurement records after the fact to justify its position is denied as pure speculation.

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CONTRACTS--PROTESTS--GENERAL ACCOUNTING OFFICE PROCEDURES--RECONSIDERATION REQUESTS--ERROR OF FACT OR LAW--NOT ESTABLISHED

Prior decision is affirmed on reconsideration where the protester has not shown any error of fact or law which would warrant reversal of the decision.

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